

State Operations Manual

Appendix Q - Guidelines for Determining Immediate Jeopardy

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PREAMBLE

Changes made to Appendix Q – Guidelines for Determining Immediate Jeopardy, reflect CMS' concern that crisis situations in which the health and safety of individuals are at risk, are accurately identified, thoroughly investigated and resolved as quickly as possible. In the interest of consistency, the new Guidelines standardize the definitions of Immediate Jeopardy, abuse and neglect across all certified Medicare/Medicaid entities (excluding CLIA), and describe the process surveyors use in making a determination of Immediate Jeopardy. The Guidelines provide a detailed analysis of the steps surveyors should follow to assist them in accurately identifying those circumstances which constitute Immediate Jeopardy: preparation, investigation, decision-making and implementation. "Triggers" alert surveyors that some circumstances may have the potential to be identified as Immediate Jeopardy situations and therefore require further investigation before any determination is made. A detailed review of three sample cases "walk" surveyors through the steps necessary to carefully analyze and accurately determine whether or not an Immediate Jeopardy situation exists. To provide further guidance to surveyors, Attachment B uses actual examples of situations in which Immediate Jeopardy has been cited.

In the interest of reducing or eliminating abuse and neglect to all beneficiaries, the Guidelines caution surveyors that when abuse or neglect has been identified, the circumstances must be thoroughly evaluated to determine if Immediate Jeopardy exists.

The Guidelines also clarify that actual harm, as well as the **potential** for harm, to one or to more than one individual may constitute Immediate Jeopardy.

I - Introduction

Immediate Jeopardy is interpreted as a crisis situation in which the health and safety of individual(s) are at risk (see SOM §3010). These guidelines are for use in determining if circumstances pose an Immediate Jeopardy to an individual's health and safety. These guidelines will assist Federal and State Survey and Certification personnel and Complaint Investigators in recognizing situations that may cause or permit Immediate Jeopardy.

These guidelines apply to all certified Medicare/Medicaid entities (excluding CLIA) and to all types of surveys and investigations: certifications, recertifications, revisits, and complaint investigations. In these guidelines, "entity" applies to all Medicare/Medicaid certified providers, suppliers, and facilities. "Surveyor" represents both surveyors and complaint investigators. "Team" represents either a single surveyor or multiple surveyors. The term "Immediate Jeopardy" replaces the terms "Immediate and Serious Threat" and "Serious and Immediate Threat" for all certified Medicare/Medicaid entities.

NOTE: The primary goals of these Immediate Jeopardy guidelines are to identify and to prevent serious injury, harm, impairment, or death.

II - Definitions

The following definitions apply to all certified Medicare/Medicaid entities:

Immediate Jeopardy - “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.” (See 42 CFR Part 489.3.)

Abuse - “The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.” (See 42 CFR Part 488.301.)

Neglect - “Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.” (See 42 CFR Part 488.301.)

III - Principles

The goal of the survey process is to ensure the provision of quality care to all individuals receiving care or services from a certified Medicare/Medicaid entity. The identification and removal of Immediate Jeopardy, either psychological or physical, are essential to prevent serious harm, injury, impairment, or death for individuals.

- Only **ONE INDIVIDUAL** needs to be at risk. Identification of Immediate Jeopardy for one individual will prevent risk to other individuals in similar situations.
- **Serious harm, injury, impairment, or death** does **NOT** have to occur before considering Immediate Jeopardy. The high potential for these outcomes to occur in the very near future also constitutes Immediate Jeopardy.
- Individuals must not be subjected to abuse by **anyone** including, but not limited to, entity staff, consultants or volunteers, family members or visitors.
- Serious harm can result from both abuse and neglect.
- Psychological harm is as serious as physical harm.
- When a surveyor has established through investigation that a cognitively impaired individual harmed an individual receiving care and services from the entity due to the entity’s failure to provide care and services to avoid physical harm, mental anguish, or mental illness, this should be considered neglect.
- Any time a team cites abuse or neglect, it should consider Immediate.

Upon recognizing a situation that may constitute Immediate Jeopardy, the investigation process must proceed until it confirms or rules out Immediate. The serious harm, injury, impairment or death may have occurred in the past, may be occurring at present, or may be likely to occur in the very near future as a result of the jeopardy situation. After determining that the harm meets the definition of Immediate Jeopardy, consider the following points regarding entity compliance:

- The entity either created a situation or allowed a situation to continue which resulted in serious harm or a potential for serious harm, injury, impairment or death to individuals.
- The entity had an opportunity to implement corrective or preventive measures.

After recognizing Immediate Jeopardy and completing the investigation, the team will then choose the specific Federal regulation(s) to address the deficient practice. Although a specific Federal regulation may not be found for each situation, all Medicare/Medicaid entities have a responsibility to provide quality care. The principles of Immediate Jeopardy apply to all certified entities and need to be followed for all individuals receiving care and services in those entities. The team should determine which Federal regulation(s) to document the deficient practices(s).

NOTE: The key factor in the use of Immediate Jeopardy termination authority is, as the name implies, limited to **Immediate Jeopardy**. Immediate Jeopardy procedures must not be used to enforce compliance quickly on more routine deficiencies.

IV - Immediate Jeopardy Triggers

This guide lists issues with associated triggers. The issues include general statements of practices such as “Failure to protect from abuse.” The guide includes situations that most likely create jeopardy to an individual’s psychological and/or physical health and safety.

Triggers that will assist the surveyor in considering Immediate Jeopardy accompany each issue. Triggers describe situations that will cause the surveyor to consider if further investigation is needed to determine the presence of Immediate Jeopardy. The listed triggers do not automatically equal Immediate Jeopardy. The team must investigate and use professional judgment to determine if the situation has caused or is likely to cause serious harm, injury, impairment or death. These triggers are general examples and are not all-inclusive. Many triggers may apply to more than one issue. A trigger for an issue such as C, “Failure to Protect from Psychological Harm,” could well be an example of A, “Failure to Prevent Abuse,” or B, “Failure to Prevent Neglect.” The team must rely on professional judgment and utilize the resources of the State survey agency, the Regional Office and/or, in the case of Medicaid-only facilities, the State Medicaid Agency to determine the presence of Immediate Jeopardy.

NOTE: **Harm** does **NOT** have to occur before considering Immediate Jeopardy.
Consider both potential and actual harm when reviewing the triggers in the table.

Triggers	
Issue	Triggers
A Failure to protect from abuse.	<ol style="list-style-type: none"> 1. Serious injuries such as head trauma or fractures; 2. Non-consensual sexual interactions; e.g., sexual harassment, sexual coercion or sexual assault; 3. Unexplained serious injuries that have not been investigated; 4. Staff striking or roughly handling an individual; 5. Staff yelling, swearing, gesturing or calling an individual derogatory names; 6. Bruises around the breast or genital area; or Suspicious injuries; e.g., black eyes, rope marks, cigarette burns, unexplained bruising.
B Failure to Prevent Neglect	<ol style="list-style-type: none"> 1. Lack of timely assessment of individuals after injury; 2. Lack of supervision for individual with known special needs; 3. Failure to carry out doctor's orders; 4. Repeated occurrences such as falls which place the individual at risk of harm without intervention; 5. Access to chemical and physical hazards by individuals who are at risk; 6. Access to hot water of sufficient temperature to cause tissue injury; 7. Non-functioning call system without compensatory measures; 8. Unsupervised smoking by an individual with a known safety risk; 9. Lack of supervision of cognitively impaired individuals with known elopement risk; 10. Failure to adequately monitor individuals with known severe self-injurious behavior; 11. Failure to adequately monitor and intervene for serious medical/surgical conditions; 12. Use of chemical/physical restraints without adequate monitoring; 13. Lack of security to prevent abduction of infants; 14. Improper feeding/positioning of individual with known aspiration risk; or 15. Inadequate supervision to prevent physical altercations.
C Failure to protect from psychological harm	<ol style="list-style-type: none"> 1. Application of chemical/physical restraints without clinical indications; 2. Presence of behaviors by staff such as threatening or demeaning, resulting in displays of fear, unwillingness to communicate, and recent or sudden changes in behavior by individuals; or 3. Lack of intervention to prevent individuals from creating an environment of fear.

Triggers	
Issue	Triggers
D Failure to protect from undue adverse medication consequences and/or failure to provide medications as prescribed.	<ol style="list-style-type: none"> 1. Administration of medication to an individual with a known history of allergic reaction to that medication; 2. Lack of monitoring and identification of potential serious drug interaction, side effects, and adverse reactions; 3. Administration of contraindicated medications; 4. Pattern of repeated medication errors without intervention; 5. Lack of diabetic monitoring resulting or likely to result in serious hypoglycemic or hyperglycemic reaction; or 6. Lack of timely and appropriate monitoring required for drug titration.
E Failure to provide adequate nutrition and hydration to support and maintain health.	<ol style="list-style-type: none"> 1. Food supply inadequate to meet the nutritional needs of the individual; 2. Failure to provide adequate nutrition and hydration resulting in malnutrition; e.g., severe weight loss, abnormal laboratory values; 3. Withholding nutrition and hydration without advance directive; or 4. Lack of potable water supply.
F Failure to protect from widespread nosocomial infections; e.g., failure to practice standard precautions, failure to maintain sterile techniques during invasive procedures and/or failure to identify and treat nosocomial infections	<ol style="list-style-type: none"> 1. Pervasive improper handling of body fluids or substances from an individual with an infectious disease; 2. High number of infections or contagious diseases without appropriate reporting, intervention and care; 3. Pattern of ineffective infection control precautions; or 4. High number of nosocomial infections caused by cross contamination from staff and/or equipment/supplies.
G Failure to correctly identify individuals.	<ol style="list-style-type: none"> 1. Blood products given to wrong individual; 2. Surgical procedure/treatment performed on wrong individual or wrong body part; 3. Administration of medication or treatments to wrong individual; or 4. Discharge of an infant to the wrong individual.

Triggers	
Issue	Triggers
<p>H Failure to safely administer blood products and safely monitor organ transplantation.</p>	<ol style="list-style-type: none"> 1. Wrong blood type transfused; 2. Improper storage of blood products; 3. High number of serious blood reactions; 4. Incorrect cross match and utilization of blood products or transplantation organs; or 5. Lack of monitoring for reactions during transfusions.
<p>I Failure to provide safety from fire, smoke and environment hazards and/or failure to educate staff in handling emergency situations.</p>	<ol style="list-style-type: none"> 1. Nonfunctioning or lack of emergency equipment and/or power source; 2. Smoking in high risk areas; 3. Incidents such as electrical shock, fires; 4. Ungrounded/unsafe electrical equipment; 5. Widespread lack of knowledge of emergency procedures by staff; 6. Widespread infestation by insects/rodents; 7. Lack of functioning ventilation, heating or cooling system placing individuals at risk; 8. Use of non-approved space heaters, such as kerosene, electrical, in resident or patient areas; 9. Improper handling/disposal of hazardous materials, chemicals and waste; 10. Locking exit doors in a manner that does not comply with NFPA 101; 11. Obstructed hallways and exits preventing egress; 12. Lack of maintenance of fire or life safety systems; or 13. Unsafe dietary practices resulting in high potential for food borne illnesses.

Triggers	
Issue	Triggers
<p>J Failure to provide initial medical screening, stabilization of emergency medical conditions and safe transfer for individuals and women in active labor seeking emergency treatment (Emergency Medical Treatment and Active Labor Act).</p>	<ol style="list-style-type: none"> 1. Individuals turned away from ER without medical screening exam; 2. Women with contractions not medically screened for status of labor; 3. Absence of ER and OB medical screening records; 4. Failure to stabilize emergency medical condition; or 5. Failure to appropriately transfer an individual with an unstabilized emergency medical condition.

Guidelines for Determining Immediate Jeopardy

V - Procedures

A - Preparation

The team should be familiar with the contents of Appendix Q. The guidelines should be foremost in the team's mind to decrease the potential for missing Immediate Jeopardy. The team should also be familiar with the recommended Key Components of an entity's systemic approach to prevent abuse and neglect. The seven Key Components include: screening, training, prevention, identification, investigation, protection, and reporting/response. (Refer to Attachment C.) Both Appendix Q and the Key Components apply to all certified Medicare/Medicaid entities.

B - Investigation

The investigation must be conducted in an impartial, objective manner to obtain accurate data sufficient to support a reasonable conclusion.

1. Observation is a key component of any investigation. All observations need to be thoroughly documented. Be specific in noting time, location and exact observations.
2. The interview notes must be clear and detailed. The documentation should include the full name of the person interviewed. The time and date of the interview should be documented. Any witnesses present should be indicated.
3. Record review is used to support observations and interviews. Obtain copies of relevant documentation supporting the Immediate Jeopardy as you investigate (e.g., nurses' notes, and investigation reports).
4. If the case involves a potential criminal action, the surveyor should be aware that any physical evidence must be preserved for law enforcement agencies.
5. Team Actions
 - a. Notify the team leader immediately when an Immediate Jeopardy situation is suspected. The team leader will then coordinate the investigative efforts.
 - b. Contact the State survey agency (SA) per the SA protocol.
 - c. Gather information to address who, what, when, where and why, such as:

WHO: Who was involved in the Immediate Jeopardy situation: staff, individuals receiving care and services, and others?

Does the individual(s) at risk have special needs? Has this happened to other individuals? If yes, how many? Are there others to whom this is likely to occur? If so, how many and who? Which entity staff knew or should have known about the situation?

WHAT: What harm has occurred, is occurring, or most likely will occur?

How serious is the potential/actual harm? How did the situation occur? What was the sequence of events? What attempts did the entity make to assess, plan, correct, and re-evaluate regarding the potential/actual harm? What did the entity do to prevent any further occurrences of the same nature?

WHEN: When did the situation first occur?

How long has the situation existed? Has a similar occurrence happened before? Has the entity had an opportunity to correct the situation? Did the entity thoroughly investigate the event? Did you agree with the facility's conclusion after their investigation? Did the entity implement corrective measures to prevent any further similar situations? Did they follow up and evaluate the effectiveness of their measures?

WHERE: Where did the potential/actual harm occur? Is this an isolated incident or an entity wide problem?

WHY: Why did the potential/actual harm occur?

Was the Immediate Jeopardy preventable? Is there a system in place to prevent further occurrences? Is this a repeat deficient practice? Is there a pattern of similar deficient practices?

The team then needs to proceed to **validate** the gathered information with facility staff.

Following are two examples of teams gathering information during the investigation to answer the questions: who, what, when, where and why. Refer to C – Decision Making for the completion of the examples.

Example Case #1: The resident was admitted following a hospitalization for psychiatric care. The resident had a history of exiting behavior, impulsiveness and impaired cognition and judgment. Diagnoses included dementia with psychosis and delusion, psychomotor agitation, acute behavioral disturbances, and possible right cerebral vascular accident (CVA). Documented behavior of standing by the facility door waiting for someone to open the door and then sneaking out very fast was included in the chart.

TRIGGER: Lack of supervision of cognitively impaired individuals with known elopement risk.

Investigation:

WHO: Who is the resident? Is the resident cognitively impaired with poor decision-making skills? Is the resident's diagnosis pertinent in this case? Is the resident physically impaired? What is the resident's ambulatory status? Was the resident identified by the facility as a wanderer oblivious to physical and safety needs? Does the resident have a history of leaving the facility without informing the staff? Does the resident's care plan address wandering and risk for elopement? Does the resident wear a safety alarm device? Is there a history of elopement from this facility? How many residents were/are at risk for elopement?

WHAT: What happened? What was the resident's physical, mental, and emotional status prior to elopement? Was the resident injured? Did the facility seek outside medical treatment for the resident? If so, what did the reports from the ER physician's exam include regarding the resident's condition when examined?

WHEN: When was the resident last seen? When did the resident leave the facility? When did the facility take action? When was the resident found? Who found the resident? Was the potential for injury present? Was the outdoor temperature excessively hot or cold? Was it raining, snowing, or storming, etc.? If excessively cold temperatures were present, what was the wind chill factor? How was the resident dressed? What areas of the skin were exposed and for how long?

WHERE: Where did the resident reside? Was the resident on a special unit with extra elopement precautions? Where did this happen? How did the resident exit the facility? Describe the exact location of exit. Where is the facility located (urban or rural)? What hazards were present in the vicinity of the facility (railroad, high motor vehicle traffic, construction zones, farm fields, lakes, ponds, etc.)?

WHY: Why did this happen? Was the care plan followed? Were door alarms working properly? Were exit doors visible at all times? If so, by whom? What was the facility's plan to supervise the resident? Was it followed? If so, why did it fail? What was the physician's version of the cause for harm? Were crucial medications involving therapeutic blood/serum levels involved in the elopement (i.e., insulin, psychotropic, antihypertensives, etc.)? What other contributing factors, such as diagnosis, should be considered?

Example Case #2: Confused, debilitated 75 year old female admitted as an inpatient to the hospital has orders to discontinue all nutrition and hydration support.

TRIGGER: Withholding nutrition and hydration without sufficient documentation of advance directives could be an Immediate Jeopardy situation.

Investigation:

WHO: Who wrote the order? Is this the patient's primary care physician? Who has the authority to make the medical care decisions? Does the patient have a living will? Does the patient have a durable power of attorney? Who has spoken with the person designated to make health care decisions for the patient; e.g., social worker, primary care physician, specialist, hospice nurse, or chaplain?

WHAT: What is the patient's diagnosis? Is documentation of a terminal disease process by the attending physician contained in the progress notes? What does the progress note contain about risks and benefits of discontinuation of hydration and nutrition? What alternative treatment options have been considered and discussed with the person responsible for making health care decisions for this patient? What events precipitated the decision to discontinue hydration and nutrition? What care and services have been planned during the absence of nutrition and hydration? What steps have been taken to ascertain the patient's wishes? What is State law regarding advance directives and end of life issues?

WHEN: When did the hospital obtain evidence of the patient's wishes regarding end of life treatment? When did the physician discuss end of life issues, diagnosis, prognosis and the patient's wishes with the person designated by the patient or by law to make health care decisions?

WHERE: If the patient has an advance directive, how easy/difficult is it to find in the chart to verify the patient's wishes? If the advance directive is not in the chart, does the chart indicate where the advance directive is kept? If the patient does not have an advance directive, where is the documentation in the chart to support the patient's wishes to discontinue nutrition and hydration at the end of life? Where is the documentation to support that the person making the health care decisions is fully informed of the risks and benefits and is making the decisions the patient would have made? If the patient does not have an advance directive, does the patient's chart reflect compliance with the State law and the legal representative's decision-making authority concerning withdrawal of hydration and nutrition? Has the person with decision-making authority been fully informed of all options, including home care, hospice and long term care placement?

WHY: If the physician wrote an order to discontinue nutrition and hydration, does the progress note contain documentation of the rationale? Is there clear documentation to support the decision?

C - Decision-Making

The information gathered is used to evaluate the provision of related care and services, occurrence frequency, and the likelihood of repetition. The team needs to have gathered

and validated sufficient information to address the three components of Immediate Jeopardy (listed below) to begin the decision process.

Components of Immediate Jeopardy

1. Harm

- a. Actual** - Was there an outcome of harm? Does the harm meet the definition of Immediate Jeopardy, e.g., has the provider's noncompliance caused serious injury, harm, impairment, or death to an individual?
 - b. Potential** - Is there a likelihood of potential harm? Does the potential harm meet the definition of Immediate Jeopardy; e.g., is the provider's noncompliance likely to cause serious injury, harm, impairment, or death to an individual?
- 2. Immediacy** - Is the harm or potential harm likely to occur in the very near future to this individual or others in the entity, if immediate action is not taken? (Refer to the SOM §3010(B)(6) for timelines during normal termination.)

3. Culpability

- a. Did the entity know about the situation? If so when did the entity first become aware?
- b. Should the entity have known about the situation?
- c. Did the entity thoroughly investigate the circumstances?
- d. Did the entity implement corrective measures?
- e. Has the entity re-evaluated the measures to ensure the situation was corrected?

Note: The team must consider the entity's response to any harm or potential harm that meets the definition of Immediate Jeopardy. The stated lack of knowledge by the entity about a particular situation does not excuse an entity from knowing and preventing Immediate Jeopardy. The team should use knowledge and experience to determine if the circumstances could have been predicted. The Immediate Jeopardy investigation should proceed until the team has gathered enough information to evaluate any prior indications or warnings regarding the jeopardy situation and the entity's response. The crisis situations in which an entity did not have any prior indications or warnings, and could not have predicted a potential serious harm, are very rare.

Team Actions:

- Meet as a team;
- Follow Appendix Q;
- Share collected data;
- Identify the three components of Immediate Jeopardy;
- Decide if you have enough information to make a decision. If not, continue the investigation;
- Identify any inconsistencies or contradictions between interviews, observations and record reviews;
- Clarify any inconsistencies or contradictions;
- Determine the specific Federal regulation for the situation; and
- Consult with the SA, as necessary.

The following are examples of decision-making as the team analyzes the information obtained during the investigation. Example #1 and 2 are continuations from B- Investigation.

Example Case #1 (Continued): (Refer to B - Investigation) During the survey, the resident was observed to enter the code and exit the unit without assistance 5 times in 30 minutes and was brought back by nursing staff from the unit, nursing staff from other units and administrative staff. The front door to the facility had a broken alarm and did not latch properly and was easily accessible after exiting the locked unit. The facility was aware of the broken alarm and latch. The chart contained documentation that the facility was aware of the resident's ability to operate the door keypads for at least 60 days. The facility was located in an urban area on a busy street. A row of trees prevented anyone in the facility from viewing a resident exiting the property and crossing the street.

The record included documentation of the resident exiting the building successfully without notice. The documentation included only a brief description of the incident. After a search, the resident was located in an area emergency room being treated for a minor laceration of the lip. Police notified the facility that bystanders who had called 911 had found the resident lying down with blood on her face. The chart included subsequent reports of repeated frequent attempts to elope 25-40 times per shift, and the statement, "Patient requires 1:1, care not safe on this unit secondary to continuous exit seeking." A review of the facility investigations revealed that the facility had not completed any investigations for this resident.

Decision Making:

- Has actual harm occurred? Yes.
- Does the actual harm that occurred meet the definition of Immediate Jeopardy? No.
- Is there a likelihood of potential serious harm? Yes.
- Does the potential harm meet the definition of Immediate Jeopardy? Yes.
- Is the harm likely to recur in the very near future, if immediate action is not taken? Yes.
- Did the facility have knowledge of the situation? Yes. If so when did they first become aware? Before admission when notified of history.
- Did they thoroughly investigate the circumstances? No.
- Did they implement corrective measures? No.
- Does this meet the definition of Immediate Jeopardy? Yes.
- Which is the most appropriate tag to define the failed practice?

Outcome:

- The team identifies the most appropriate regulation that applies to the situation.
- The team proceeds with documentation of the Immediate Jeopardy deficient practice.
- The SA proceeds with the termination procedures per the SOM.
- Except in the case of Medicaid-only facilities, the RO proceeds with termination actions.

Example Case #2 (Continued): (Refer to B - Investigation) During the investigation, the surveyor finds that the chart does not include a copy of the patient's advance directive. The progress note does not contain any documentation of the patient ever stating a wish to have nutrition and hydration withdrawn at the end of life. The patient has a diagnosis of advance dementia with a documented history of refusal to eat in a long-term care facility. The patient had been admitted because of continued weight loss and dehydration related to the refusal to eat or drink. The patient has a daughter who actively

participates in her mother's care, is identified as the legal representative, and is identified in the social service notes as the closest living family member. The primary care physician documented a discussion with the daughter concerning the patient's poor prognosis for meaningful recovery. While death is not imminent as a result of the dementia, death is the expected result at some unknown time in the future. The chart does not include any documentation that the daughter expressed a wish to have nutrition and hydration support withdrawn. The social worker was unable to confirm that the daughter had expressed a wish to have all support withdrawn. The social worker is uncertain why the nutrition and hydration were discontinued. When contacted, the daughter is unaware that support has been withdrawn and is very upset. The surveyor copies the order sheet, the progress notes and the social service notes. The surveyor clearly documents the interviews with the social worker and the daughter. There is a discrepancy between the written order for withdrawal of support and the daughter's and the social worker's knowledge of the situation. The surveyor decides to present the information to the team prior to contacting the physician.

Decision Making:

- Has actual harm occurred? No.
- Is there a likelihood of potential serious harm? Yes.
- Does the potential serious harm meet the definition of Immediate Jeopardy, e.g., serious injury, harm, impairment, or death? Yes.
- Is the potential serious harm likely to occur in the very near future, if immediate action is not taken? Yes.
- Did the facility have knowledge of the situation? Yes.
- If so, when did they first become aware? After the doctor's order was written?
- Did they thoroughly investigate the circumstances? No.
- Did they implement corrective measures? No.
- Does this meet the definition of Immediate Jeopardy? Yes.
- Which is the most appropriate tag to define the failed practice?

Outcome:

- The team identifies the most appropriate regulation that applies to the situation.

- The team proceeds with documentation of the Immediate Jeopardy deficient practice.
- The SA proceeds with the termination procedures per the SOM.
- The RO proceeds with termination actions.

Example Case #3: An outside intruder entered a resident's room by cutting through the screen. A resident with a diagnosis of advanced dementia was raped. The resident did not notify staff at the time of the incident. The intruder was not observed entering the facility by any facility staff. However, nightshift staff immediately called the police after noticing a stranger in the courtyard at the back of the facility. The police came and were unable to locate anyone. The police checked the grounds without incident and then encouraged the staff to check the locks on the doors and windows and obtain services to monitor the premises for increased security. The police indicated that no prior intruders had been reported in the neighborhood.

The facility immediately contacted a local security service and hired a security guard to monitor the outside grounds. The security guard arrived within 45 minutes and began patrolling the grounds. The facility staff checked all the doors and windows to ensure security. They checked on all of the residents and did not observe any problems. During morning rounds, the resident reported that someone had hurt her during the night. The staff noted that the screen had been damaged and immediately contacted the police and the SA. The police came and had the resident transported to the nearest emergency room for a rape assessment. The emergency room confirmed that the resident had been raped.

Decision-Making:

- Has actual harm occurred? Yes.
- Does the harm meet the definition of Immediate Jeopardy, e.g., serious injury, harm, impairment, or death to an individual? Yes.
- Is the harm likely to recur in the very near future, if immediate action is not taken? Yes.
- Did the entity have knowledge of the situation? Yes.
- If so when did they first become aware? In the morning when the resident reported she had been hurt.
- Did they thoroughly investigate the circumstances? Yes.
- Did they implement corrective measures? Yes.

- Does this meet the definition of Immediate Jeopardy? No. The facility reacted appropriately and followed the recommendations of the law enforcement experts to protect all residents. The harm to the resident had already occurred before the facility had any indications or warnings, and could not have been predicted or prevented.

Outcome:

- The team gathered sufficient data to reach the conclusion that the facility had no predictable way of knowing that residents were at risk for harm from an intruder.
- The team also gathered sufficient data to reach a decision that the facility reacted immediately to protect residents when they had knowledge of a potential risk.
- The team concludes that there was no failed practice.
- The team concludes their investigation of this complaint.

VI - Implementation

A - Team Actions

If the team reaches a consensus concerning the presence of Immediate Jeopardy, the team leader then contacts the SA per the protocol established by the SA. The SA review should be expedited. If the team is unable to follow the SA protocol for administrative consultation, actions to proceed with implementation of Immediate Jeopardy must continue. Decide if any other agencies need to be notified, e.g., Law Enforcement Agency, Nurses Aide Registration Board.

NOTE: Any criminal act needs to be reported to the local law enforcement agency. The entity should be encouraged to make the report, if needed. The surveyor should only assume this responsibility if the entity refuses.

B - SA Actions

Upon review of the findings, if the SA concurs with the team's consensus of Immediate Jeopardy, the SA will inform the RO for all Medicare and dually certified entities. For Medicaid-only facilities, the SA will notify the State Medicaid Agency. For Immediate Jeopardy in Medicaid-only facilities, contact the RO per the protocol established between the SA and the RO.

C - Team Action

Once the team has decided that Immediate Jeopardy exists, the team should notify the administration of the Immediate Jeopardy. A verbal notice should be given with the

specific details, including the individuals at risk, before the survey team leaves the premises of the entity. **The entity should begin immediate removal of the risk to individuals, and immediately implement corrective measures to prevent repeat Jeopardy situations.** The team should encourage the entity to provide evidence of their implementation of corrective measures.

The notice describing the Immediate Jeopardy must be delivered to the entity no later than 2 days (refer to specific SOM reference) of the end of the survey. If official notification of **all** deficiencies, i.e., Form CMS-2567, was not given on the second day, a completed Form CMS-2567 must be sent to the entity on the tenth working day.

VII - Documentation

A - Skilled Nursing Facilities/Nursing Facilities (SNF/NF)

1 - Confirmation of Removal of Immediate Jeopardy

Only onsite confirmation of implementation of the facility's corrective actions justifies a determination that the Immediate Jeopardy has been removed.

2 - Immediate Jeopardy Removed, Deficient Practice Corrected

If the facility is able to remove the Immediate Jeopardy before the survey team leaves the facility and to correct associated deficient practices, cite the Immediate Jeopardy at the Immediate Jeopardy severity and scope (J, K or L). Document evidence of the facility's actions, including dates that indicate that the facility has removed the Immediate Jeopardy and corrected the deficient practice. The date of full correction will be shown on the Form CMS-2567B, a copy of which can be found at <http://cms.hhs.gov/forms/cms2567b.pdf>

3 - Immediate Jeopardy Removed, Deficient Practice Present

If the facility is able to employ immediate corrective measures that remove the Immediate Jeopardy, but an associated deficient practice still exists at a lesser severity and scope, cite the Immediate Jeopardy at the Immediate Jeopardy severity and scope. Include the documentation to support the remaining deficient practice. Document the level of harm and the identified residents in the Statement of Deficiencies. Attach the corrective measures submitted by the facility as an immediate plan of correction.

4 - Immediate Jeopardy Not Removed

If the facility is unable or unwilling to remove the Immediate Jeopardy before the end of the survey, inform the administration that the RO will be notified of the

Immediate Jeopardy and termination procedures will be initiated. Use the appropriate SOM reference to define the end of the survey.

B - All Entities Not Noted Above

Immediate Jeopardy is always cited at the **Condition** level on the Form CMS-2567, a copy of which can be found at <http://www.cms.hhs.gov/forms/cms2567.pdf>.

1 - Confirmation of Removal of Immediate Jeopardy

Only onsite confirmation of implementation of the facility's corrective action justifies a determination that the Immediate Jeopardy has been removed.

2 - Immediate Jeopardy Removed, Deficient Practice Corrected

If the entity is able to remove the Immediate Jeopardy and correct associated deficient practices before the team exits, cite the Immediate Jeopardy at the Condition level on the Form CMS-2567. Corrective actions taken by the provider/supplier will be included in the Form CMS-2567 documentation. The date of full correction will be shown on the Form CMS-2567B.

3 - Immediate Jeopardy Removed, Deficient Practice Present at Condition Level

If the entity is able to employ immediate corrective measures that remove the Immediate Jeopardy, but an associated deficient practice still remains at the condition level for the same Condition of Participation, cite the Condition of Participation as not met and proceed with 90-day termination procedures. Include documentation of both the Immediate Jeopardy with subsequent removal, and the remaining deficient practice in this citation.

4 - Immediate Jeopardy Removed, Deficient Practice Present at Standard or Elemental Level

If the entity is able to employ immediate corrective measures, which remove the Immediate Jeopardy but an associated deficient practice still remains at the standard or elemental level, cite the Immediate Jeopardy at the Condition of Participation level on Form CMS-2567. Cite the remaining deficiency at the most appropriate standard or elemental tag. The date of removal of the Immediate Jeopardy will be shown on the Form CMS-2567B.

5 - Immediate Jeopardy Not Removed

If the entity is unable or unwilling to remove the Immediate Jeopardy before the team's exit, inform the administration that the RO will be notified of the Immediate Jeopardy situation and termination procedures will be initiated. In the case of a

Medicaid-only facility, the State Medicaid Agency will be notified of the Immediate Jeopardy.

VIII - Enforcement

(Rev. 102, Issued: 02-14-14, Effective: 02-14-14, Implementation: 02-14-14)

A - Termination for Title XIX-Only NFs, ICFs/IID

Refer to SOM §3005 E for specific instructions.

IX - References

- SOM Appendices (Excluding Appendix C, CLIA)
- Principles of Documentation
- SOM §3005 E
- SOM §§3010-3012
- SOM §§7307-7309

Attachment A

(Rev. 102, Issued: 02-14-14, Effective: 02-14-14, Implementation: 02-14-14)

The jeopardy situations that follow are actual citations that have been upheld.

IMMEDIATE JEOPARDY NOT REMOVED BEFORE EXIT

ICF/ID Failed Practice

Condition of Participation - The facility failed to assure medical services were provided to a client with an emergency medical condition.

Summary - At 4:30 a.m. on x/x/x, the nursing staff was notified that Client #1 had not slept during their shift and had three to four liquid stools that night. Nursing staff assessed the client, found his bed smeared with feces (color and consistency not described), his color slightly pale, abdomen slightly distended, and dried blood around his mouth. Assessed vital signs were blood pressure 100/60, heart rate 70 beats per minute, temperature 100.5 degrees Fahrenheit. His treatment consisted of Tylenol (given orally) at 5:10 a.m.

At approximately 5:45 a.m., Client #1 became unsteady while exiting the bathroom and was lowered to the floor with staff assistance. At 6:00 a.m., the client was described as, “skin cold, clammy - color pale.” His blood pressure had dropped to 88/50, heart rate 85 beats per minute, oxygen saturation 93%. The client was placed on oxygen at 5 liters per minute and preparations were initiated to transfer the client to the infirmary.

At 6:25 a.m., Client #1 was still on the floor outside of the bathroom and the records indicated he was unresponsive. His blood pressure was 80/50, and his heart rate dropped to 67 beats per minute. The client tried to remove the nasal cannula that supplied him with oxygen and “insisted on sitting up.” After sitting up, his skin was documented as decreased in color and “sallow.” He had coffee ground drooling coming from both corners of his mouth.

At 6:40 a.m., the community emergency response number (911) was called. At 6:45 a.m., Client #1 was documented as being unresponsive with absent blood pressure, pulse, and respirations. Cardiopulmonary Resuscitation (CPR) was initiated. At 6:49 a.m., the community 911-response team arrived and took over CPR. The client expired at 7:00 a.m..

The Superintendent stated that staff were expected to use their own judgment as to when to access 911 emergency services. Review of facility Procedure #X revealed a lack of clear guidelines to facility staff on when to call for community 911 emergency response.

Issue - Failure to protect from neglect.

Trigger - Failure to adequately monitor and intervene for serious medical/surgical conditions.

Decision Making:

- Has actual harm occurred? Yes
- Does the harm meet the definition of Immediate Jeopardy, e.g., serious injury, harm, impairment, or death to an individual? Yes
- Is the harm likely to recur in the very near future, if no immediate action is taken?
Yes
- Did the entity have knowledge of the situation? Yes If so, when did the entity first become aware? On the night shift.
- Did they thoroughly investigate the circumstances? No
- Did they implement corrective measures? No
- Does this meet the definition of Immediate Jeopardy? Yes
- Which is the most appropriate tag to define the failed practice? Cite the most appropriate tag at the Condition of Participation level for Immediate Jeopardy.

Outcome - The team cited the Condition of Participation, Health Care Services (Tag W318). The facility implemented a corrective action plan after receiving written notice. Onsite revisit confirmed correction.

Attachment B

Documentation for Immediate Jeopardy should follow the Principles of Documentation. The following are examples of Forms CMS-2567 documenting Immediate Jeopardy.

Example for LTC: Failure to Prevent Abuse

F223

483(b) Requirements: Abuse

Scope and Severity B Level is J - The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

This requirement is not met as evidenced by the following:

Based on interview, and record reviews, it was determined the facility failed to assure that the female residents on the North Wing had an environment that was free from sexual abuse. The findings constituted an Immediate Jeopardy situation. Facility staff had knowledge of the inappropriate sexual behaviors of two male residents (Residents #12 and 27). The facility had not consistently identified the victims, had not conducted investigations, and had not implemented effective preventive measures to protect the female residents on North Wing from actual and potential sexual abuse. There were multiple incidents of actual harm with three identified sample residents (Residents #3, 14, and 25). There were three incidents of potential harm for three unidentified residents.

Findings include:

1. A review of Resident #12's record revealed a nurse's note dated xx/xx/xx, at 1:30 a.m., the resident was found sitting next to Resident #3 in the common area. Resident #12 had "one hand on [Resident #3's] buttock and one hand on the breast. [Resident #3] was attempting to push Resident #12's hand away." At 4:00 a.m., the same day, Resident #12 was found in the hallway with hands on an unidentified, nude female resident.
2. Resident #12 record revealed that on xx/xx/xx, at 11:30 p.m., the resident was found in an unidentified female resident's bed with both side rails up. Resident #12 had one hand directly on the female's labia. The female resident was unable to respond. The nurses notes dated xx/xx/xx, stated, "Resident #12 was sexually inappropriate with a female resident who could not give consent."
3. On xx/xx/xx, at 7:15 p.m., a nurses note in Resident #12's record stated that the resident was found standing in the hall, behind Resident #14, who was sitting in a

wheelchair. Resident #12's hands were on Resident #14's breast. Resident #14 stated, "I am going to call the police."

4. Interview with the Administrator and DON on xx/xx/xx, confirmed that none of the incidents involving Resident #12 had been reported to the State per the State's complaint protocol.
5. On xx/xx/xx at 3:30 a.m., Resident #27's record revealed the resident was found in the room of Resident #25 (a severely cognitively impaired resident, who was unable to communicate) standing by the bed, with pajama bottoms down and hands in Resident #25's genital area. An incident report, dated xx/xx/xx revealed Resident #25 "looked frightened, with widened eyes, unable to defend self or call for help."
6. Nurses notes dated xx/xx/xx, at 10:30 p.m., revealed Resident #27 was found in an unidentified resident's room, with the covers pulled back, and hands in the resident's genital area.
7. There were no incident reports for xx/xx/xx or xx/xx/xx for Resident #27. Interview with the charge nurse on xx/xx/xx, revealed that she had no knowledge of the incidents, whether an investigation of the incidents had been conducted, or if efforts had been made to protect female residents.

Example for All Other Entities with Conditions of Participation or Conditions of Coverage: Failure to provide safety from fire, smoke and environmental hazards and/or failure to educate staff in handling emergency situations

I 117

485.723 Condition: Physical Environment

The building housing the organization is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public and provides a functional, sanitary, and comfortable environment.

This Condition is not met as evidenced by the following:

Based on observation, interview and review of policies and procedures, the agency failed to assure patients were protected from fire hazards, failed to provide adequate egress for emergencies (refer to I-118) and failed to provide adequate protection from hazardous chemicals (refer to I-158). These deficiencies resulted in potential harm for 20 of 20 sample patients (#1-20) and the 90 additional patients receiving care at the agency. An Immediate Jeopardy to the patients and the public was created by these deficiencies.

I-118

485.723(a) Standard Safety of Patients

The organization satisfies the following requirements:

1. It complies with all applicable State and local building, fire, and safety codes.
2. Permanently attached automatic fire-extinguishing systems of adequate capacity are installed in all areas of the organization considered to have special fire hazards. Fire extinguishers are conveniently located on each floor of the premises. Fire regulations are prominently posted.
3. Doorways, passageways, and stairwells negotiated by patients are:
 - a. Of adequate width to allow for easy movement of all patients (including those on stretchers or in wheelchairs);
 - b. Free from obstruction at all times;
 - c. In the case of stairwells, equipped with firmly attached handrails on at least one side;
 - d. Lights are placed at exits and in corridors used by patients and are to be supported by an emergency power source;
 - e. A fire alarm system with local alarm capability and, where applicable, an emergency power source is functional;
 - f. At least two persons are on duty on the premises of the organization whenever a patient is being treated; and
 - g. No occupancies or activities undesirable or injurious to the health and safety of patients are located in the building.

This Standard is not met as evidenced by the following:

Based on an observation and interview, the agency failed to provide unobstructed hallways and exits for 1 of 2 exit doors and hallways; failed to provide adequate maintenance of exit lighting for 1 of 2 exits and 2 of 4 emergency lights; and failed to provide a fire alarm system; resulting in the potential harm for all the agency's current patients including 20 of 20 sample patients (#1-20). This resulted in an Immediate Jeopardy.

Findings Include:

1. Observation of the passageway on xx/xx/xx at 3 p.m. and on xx/xx/xx at 10 a.m., revealed that the east hallway was partially obstructed with several items of furniture and other obstacles. During interview, at 11 a.m. on xx/xx/xx, the administrator stated that the building manager was temporarily storing these items in the hallway. The administrator was unable to provide a date when the items might be relocated.
2. Observation at 12 noon on xx/xx/xx, revealed that the exercise pool for the agency was located in the basement in a windowless room. The room had two exit doors, located at opposite ends of the pool with narrow walkways on each side of the pool. One of the emergency exit signs above the door was not illuminated. The other exit door, with the illuminated emergency light, was locked. Four small battery powered flashlights had been placed throughout the room. Two of the four lights failed to illuminate when activated. The two remaining lights, when activated, failed to provide adequate lighting to allow visibility for egress.
3. Review of the agency's policies and procedures indicated that, in case of fire, employees were to pull the manual alarm. Interview with staff during the survey revealed that seven of the seven staff members on duty were unable to identify where the pull alarm was located. Observation on xx/xx/xx at 10 a.m. failed to provide any evidence of a fire alarm. During interview with the administrator on xx/xx/xx at 12 noon, the absence of a fire alarm was confirmed.

I 158

485.723(b) Standard: Maintenance of Equipment/Buildings/Grounds

The organization establishes a written preventive maintenance program to ensure that:

1. The equipment is operative and is properly calibrated; and
2. The interior and exterior of the building are clean and orderly and maintained free of any defects that are a potential hazard to patients, personnel, and the public.

This Standard is not met as evidenced by the following:

Based on observation and review of the policies and procedures, the agency failed to provide preventative maintenance of the clothes dryer resulting in a potential fire hazard, and failed to properly store pool supplies resulting in a potential chemical hazard for 20 of 20 sample residents (#1-20) and all of the current patients. This resulted in Immediate Jeopardy.

Findings Include:

1. Observation of the laundry room on xx/xx/xx at 12:50 a.m., revealed a large amount of dryer lint on top of the dryer and the water heater, behind the washer, dryers, and water heater, and covering the ceiling and the ceiling roof vent. The washing machine repairman, during interview on xx/xx/xx at 1 p.m., related the extent of the lint accumulation to a plugged dryer exhaust vent and stated that this was an “extreme fire hazard.” The administrator was notified of the potential fire hazard on xx/xx/xx at 1:30 p.m.. The vent had not been cleaned, nor had the lint been removed by xx/xx/xx, even though the administrator had been notified of the potential hazard 2 days prior.
2. Observation of the storage area for pool supplies and equipment on xx/xx/xx at 2 p.m., revealed that the chlorine powder was stored in barrels with damaged lids which did not close properly. The chlorine powder had been spilled on the floor and had been tracked out into the pool area. Neither the storage area nor the pool area contained any hazardous chemical warnings. An interview with the pool maintenance staff on xx/xx/xx at 2:15 p.m., did not provide any evidence that the staff had been educated regarding the precautions for hazardous chemicals. The staff was unable to locate any policies or procedures regarding how employees should respond to a chemical spill.

Attachment C - Overview - Recommended Key Components of Systemic Approach to Prevent Abuse and Neglect

(Rev. 102, Issued: 02-14-14, Effective: 02-14-14, Implementation: 02-14-14)

Examples--Key Components applied to the following provider types:

Key Components Applicable To All Providers

1. Prevent

The facility or system has the capacity to prevent the occurrence of abuse and neglect and reviews specific incidents for “lessons learned” which form a feedback loop for necessary policy changes.

Nursing Homes

Regulation Authority: 483.13(b), 483.13(c), 483.13(c)(3)

Survey Guidance - Surveyors determine if:

The facility must develop and implement written policies and procedures that include the seven key components: screening, training, prevention, identification, investigation, protection and reporting/response; the facility identifies, corrects and intervenes in situations in which abuse or neglect is more likely to occur, and the facility identifies characteristics of physical environment and deployment of staff and residents (e.g., those with aggressive behaviors) likely to precipitate abuse or neglect.

ICFs/IID

Regulation Authority: 483.420(a)(5), 483.420(d)(1), 483.420(d)(1)(I)

Survey Guidance - Surveyors determine if:

The facility has and implements abuse prevention policies and procedures; and the facility organizes itself in such a manner that individuals are free from threat to their health and safety.

2. Screen

The facility or system provides evidence and maintains efforts to determine if persons hired have records of abuse or neglect.

Nursing Homes

Regulation Authority - 483.13(c)(1)(ii) (A)&(B)

Survey Guidance - Surveyors determine if: The facility screens potential employees for a history of abuse, neglect, or mistreating residents as defined by the applicable requirements.

ICFs/ID

Regulation Authority - 483.420(c)(1)(iii)

Survey Guidance - Surveyors determine if: The facility screens potential employees to prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect, or mistreatment.

3. Identify

The facility or system creates and maintains a proactive approach to identify events and occurrences that may constitute or contribute to abuse and neglect.

Nursing Homes

Regulation Authority - 483.13(c)(2)

Survey Guidance - Surveyors determine if: The facility identifies events such as suspicious bruising of residents, occurrences, patterns and trends that may constitute abuse; and determine the direction of the investigation.

ICFs/ID

Regulation Authority - 483.420(a)(5)

Survey Guidance - Surveyors determine if: The facility identifies patterns or isolated incidents of unexplained functional regression, or other evidence of physical, verbal, sexual or psychological abuse or punishment posing a serious and immediate threat to individuals.

4. Train

The facility or system, during its orientation program, and through an ongoing training program, provides all employees with information regarding abuse and neglect and related reporting requirements, including prevention, intervention and detection.

Nursing Homes

Regulation Authority - 483.74(e)

Survey Guidance - Surveyors determine if: The facility has procedures to train employees, through orientation and on-going sessions, on issues related to abuse prohibition practices.

ICFs/IDD

Regulation Authority - 483.420(d)(1), 483.430(e)(1)

Survey Guidance - Surveyors determine if: Facility ensures that staff can define what constitutes abuse and punishment and actively promotes respect for individuals; and facility assures that staff have received training, both upon hiring and on an ongoing basis, which results in the competencies needed to do their job.

5. Protect

The facility or system must protect individuals from abuse and neglect during investigation of any allegations of abuse or neglect.

Nursing Homes

Regulation Authority - 483.13(c)(3)

Survey Guidance - Surveyors determine if: The facility has procedures to protect residents from harm during an investigation.

ICFs/IDD

Regulation Authority - 483.430(d)(3)

Survey Guidance - Surveyors determine if: The facility prevents further potential abuse while the investigation is in progress.

6. Investigate

The facility or system ensures, in a timely and thorough manner, objective investigation of all allegations of abuse, neglect, or mistreatment.

Nursing Homes

Regulation Authority - 483.13(c)(2)(3)&(4)

Survey Guidance - Surveyors determine if: The facility has procedures to investigate different types of abuse; and identify staff member responsible for the initial reporting of results to the proper authorities.

ICFs/ID

Regulation Authority - 483.420(d)(3)

Survey Guidance - Surveyors determine if: The facility investigates all injuries of unknown origin and allegations of mistreatment, neglect, or abuse.

7. Report/ Respond

The facility or system must assure that any incidents of substantiated abuse and neglect are reported and analyzed, and the appropriate corrective, remedial or disciplinary action occurs, in accordance with applicable local, State or Federal law.

Nursing Homes

Regulation Authority - 483.13(c)(1)(iii), 483.13(c)(2), 483.13(c)(4)

Survey Guidance - Surveyors determine if: The facility has procedures to report all alleged violations and substantiated incidents to the State agency and to all other agencies, as required, and to take all necessary corrective actions, depending on the results of the investigation; report to State nurse aide registry or licensing authorities any knowledge it has of any action by a court of law which would indicate an employee is unfit for service, and analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences.

ICFs/ID

Regulation Authority - 483.420(1)(6), 483.420(d)(2), 483.420(d)(4)

Survey Guidance - Surveyors determine if: The results of all investigations are reported to the administrator or designated representative or to other officials in accordance with State law within 5 working days of the incident and, if the alleged violation is verified, appropriate corrective action is taken.

Transmittals Issued for this Appendix

Rev #	Issue Date	Subject	Impl Date	CR#
R102SOM	02/14/2014	State Operations Manual (SOM) Appendix Q revisions for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	02/14/2014	N/A
R01SOM	05/21/2004	Initial Release of Pub 100-07	N/A	N/A