Why Take a Look at G Tags

- November of 2016 brought in Phase I of Lots and Lots of New Regulation
- November of 2017 is bringing in Phase II with Lots and Lots of New Regulations

G Level Tags

- They create a huge DOMINO Effect
**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. This is out of the Appendix Q of the SOM https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_q_immedjeopardy.pdf
**Row by Row**

The 3rd row, **Level 3** – G, H, and I – These are no good. They represent actual harm has occurred to a resident. Keep in mind, even a bruise, skin tear, or making a resident upset can be considered actual harm.

The top row, **Level 4** – J, K, and L – These are the worst tags you can get. This is Immediate Jeopardy territory, or IJs for short. Please keep in mind that the IJ is just an abbreviation for Immediate Jeopardy and when you hear “IJ” it doesn’t represent I or J on the scope and severity grid. It represents the classification of the row of letters J, K, and L only. So, a J is an IJ tag, A K is an IJ tag, and L is an IJ tag. Also, bear in mind that no actual harm has to occur to receive an IJ tag.

**Staff Need to Know**

- They need to know how serious these tags are.
- They need to know that it cuts into the annual bonus or even salaries.

**Expectations**

1. The first is that providers remain in substantial compliance with Medicare/Medicaid program requirements as well as State law. The regulation emphasizes the need for continued, rather than cyclical compliance. The enforcement process mandates that policies and procedures be established to remedy deficient practices and to ensure that correction is lasting; specifically, that facilities take the initiative and responsibility for continuously monitoring their own performance to sustain compliance. Measures such as the requirement for an acceptable plan of correction emphasize the ability to achieve and maintain compliance leading to improved quality of care. (See §7304.4 for plan of correction requirements.)
2. The second expectation is that all deficiencies will be addressed promptly. The standard for program participation mandated by the regulation is substantial compliance. The State and the regional office will take steps to bring about compliance quickly. In accordance with §7304, remedies such as civil money penalties, temporary managers, directed plans of correction, in-service training, denial of payment for new admissions, and State monitoring can be imposed before a facility has an opportunity to correct its deficiencies.

3. The third expectation is that residents will receive the care and services they need to meet their highest practicable level of functioning. The process detailed in these sections provides incentives for the continued compliance needed to enable residents to reach these goals.

**Resident Right Tags**

- PROCEDURES §483.10(a)-(b)/(16/2)
- Deficient practices cited under Resident right tags may also have negative psychosocial outcomes for the resident. The survey team must consider the potential for both physical and psychosocial harm when determining the scope and severity of deficiencies related to dignity.

**New F-Tags**

- F550 (resident rights);
- F551 (resident representative);
- F552 (planning and implementing care);
- F553 (right to participate);
- F554 (right to self-administer medications);
- F555 (choice of attending physician);
- F557 (respect and dignity);
- F558 (reasonable accommodation of resident needs and preferences);
- F559 (right to share a room/roommate choice);
- F560 (right to refuse to transfer);
**NEW F-TAGS**

- F561 (self-determination);
- F562 (immediate access);
- F563 (right to receive visitors);
- F564 (facility requirements);
- F565 (right to organize and participate in resident groups);
- F566 (right to choose or refuse to perform services);
- F567 (right to manage financial affairs), F568 (accounting and records);
- F569 (notice of certain balances);
- F570 (assurance of financial security);

- F571 (resident charges);
- F572 (information and communication);
- F573 (right to access personal and medical records);
- F578 (right to refuse/request treatment and to formulate an advance directive);
- F580 (physician notification of charges);
- F589 (inform residents of potential charges), which includes Skilled Nursing Facility

**DOMINO EFFECT**

1) The home will be prohibited from submitting or receiving payment for services rendered to Medicare and Medicaid recipients who are admitted to the facility on or after [DATE GIVEN]. Usually 20 days after the letter of notice.

2) Includes denial of payment for new Medicare admissions including Medicare beneficiaries enrolled in managed care plans. It is your obligation to inform the Medicaid managed care plan contracting with your home of the denial of payment.

3) Generally, if the facility achieves substantial compliance and it is verified in accordance with 42 CFR 482.25, CMS or the State Medicaid Agency must resume payments to the facility prospectively from the date it determines that substantial compliance was achieved. However, when payment is denied for repeated instances of substandard quality of care, the remedy may not be lifted until the facility is in substantial compliance and the State or CMS believes that the facility will remain in substantial compliance. No payments are made to reimburse the facility for the period of time between the date the remedy was imposed and the date that substantial compliance was achieved. The Medicare and Medicaid program denial of payment remedy is accomplished through written instructions from the appropriate Medicare Area Contractor in Medicare cases, and in Medicaid cases, through written instructions from the regional office.

4) If substantial compliance with all requirements for participation in the Medicare and Medicaid program is not achieved (about 3 months), the facility’s Medicare and Medicaid participation will be terminated. (Separate formal notification)
5) For Medicaid, no later than (usually around 20 days) the facility must submit to the MO HealthNet Division the following information:
   - The names of all residents in the facility
   - The DCNs numbers for all Medicaid eligible residents in the facility
   - The identification of any resident who has an application pending for participation in the Medicaid program
6) Nurse Aid Training and Competency Evaluation Programs offered in your home will stop for two years
7) Subject to an extended or partial extended survey.

---

8) Waivers – All have to be reapplied for
9) Drops your Five Star Quality Measure Rating and stays on for three years.
10) Any Second Business Licenses that you hold have to be reapplied for.
11) Administrator License goes under review by the Mo. Board of Nursing Home Administrators
12) The regional office or State Medicaid Agency will impose termination and/or temporary management in as few as 2 calendar days.

---

**Extended Survey**

- Extended Survey - The extended survey is conducted after substandard quality of care is determined during a standard survey. If, based on performing the resident-centered tasks of the standard survey it is determined that the facility has provided substandard quality of care in 42 CFR 483.13, Resident Behavior and Facility Practices; 42 CFR 483.15, Quality of Life; and/or 42 CFR 483.25, Quality of Care, conduct an extended survey within 14 days after completion of the standard survey.
**Remedies Imposed**

Remedies are imposed – depending on

- (i) No actual harm with a potential for minimal harm;
- (ii) No actual harm with a potential for more than minimal harm, but not immediate jeopardy;
- (iii) Actual harm that is not immediate jeopardy;
- (iv) Immediate jeopardy to resident health or safety.

- (2) Whether the deficiencies—
  - (a) Are isolated;
  - (b) Create a pattern;
  - (c) Are widespread.

**Civil Monetary Penalty (CMP)**

- For an ICF - The regional office or State Medicaid Agency may impose a civil money penalty between $3,050 and $10,000 per day of immediate jeopardy or a “per instance” civil money penalty from $1,000 to $10,000 for each deficiency. The specific procedures for civil money penalties can be found in 42 CFR 751.9-7536.

- A civil money penalty is a valuable enforcement tool because it can be imposed, under certain circumstances, for each day that a facility is out of compliance with participation requirements or for each instance of noncompliance. If imposed, a facility cannot avoid the remedy. The civil money penalty may be imposed immediately or after a facility is given an opportunity to correct a noncompliance. However, a menu of remedies from which to choose exists, and a civil money penalty may not be the most appropriate choice of remedy in every situation of noncompliance. The imposition of a civil money penalty may be most appropriate when a facility is not given an opportunity to correct, when immediate jeopardy exists, when noncompliance is at levels G, H, I, or when there is a finding of substandard quality of care. States and regional offices are encouraged to develop methods to ensure that civil money penalty amounts are applied consistently within the broad ranges identified at 42 CFR 488.408.

Civil money penalties are imposed in increments of $50.00.

1. **Lower Range of Penalty Amounts for Per Day Civil Money Penalty**
   - Penalties in the range of $50 to $3,000 per day may be imposed when immediate jeopardy does not exist, but the deficiencies either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm. A civil money penalty may not be less than $50.00 per day.

2. **Upper Range of Penalty Amounts for Per Day Civil Money Penalty**
   - Penalties in the range of $3,050 to $10,000 per day may be imposed for deficiencies constituting immediate jeopardy. Penalties may also be in the upper range of penalty amounts for deficiencies when immediate jeopardy does not exist if a penalty in the lower range of penalty amounts was previously imposed and the deficiencies in the same regulatory grouping are repeated. Repeated deficiencies are defined in §7516.3.

3. **Range of Per Instance Penalty Amounts**
   - Penalties in the range of $1,000 to $10,000 per instance(s) may be imposed for noncompliance that constitutes actual harm, or for noncompliance that has the potential for more than minimal harm. The terminology “per instance” is not used to suggest that only one instance of noncompliance can be assigned a civil money penalty. There can be more than one instance of noncompliance identified during a survey where the State utilizes the per instance civil money penalty as an enforcement remedy. The total dollar amount of the civil money penalty for the instance or multiple instances of noncompliance may not exceed $10,000 for that specific survey, and may not be less than $1,000 per instance.
**AMOUNT OF CMP**

- **EXAMPLE:** A civil money penalty is imposed for 4 days of immediate jeopardy at $3,500 per day; the amount is shifted to $1,000 per day when the immediate jeopardy is removed, and the facility is in substantial compliance with the requirements on the 11th day. A civil money penalty is imposed for 10 days of noncompliance. The total amount of the penalty is $20,000 ($3,500 x 4) + ($1,000 x 6) = $20,000. The reduced amount is also recorded in the Automated Survey Processing Environment (ASPEN) Civil Money Penalty Tracking System.

- The effective date of the per day civil money penalty will often be the date of the survey because it may be difficult to document precisely when noncompliance begins if before the date of survey.

Both the per day and the per instance civil money penalties cannot be recommended for the same survey.

**COMPLIANCE**

- A statement that the per day civil money penalty will stop accruing on the date on which the facility comes into substantial compliance or is terminated from participation in the program.

- The per day civil money penalty accrues for the number of days of noncompliance from the date that the deficiency starts until the date that the facility achieves substantial compliance or, if applicable, the date of termination. For example, if a facility is found in substantial compliance or its provider agreement is terminated on May 18, the accrual of the civil money penalty stops on May 17.

- The per instance civil money penalty is imposed for each instance of noncompliance based on a deficiency during a specific survey. It is applied to as many instances as is deemed appropriate during a specific survey up to a total of $10,000.

- **EXAMPLE:** When the per instance civil money penalty is used on the original survey, the revisits are considered another survey to determine compliance. If noncompliance is identified and a civil money penalty is selected as the enforcement response, either the per instance or per day remedy may be selected.
How Long?

- All remedies remain in effect and continue until the facility is in substantial compliance and in accordance with 42 C.F.R. §488.414(a)(3) - Repeated Substandard Quality of Care, until it has demonstrated to the satisfaction of CMS or the State Survey Agency that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements, or is terminated from Medicare and/or Medicaid participation. Substantial compliance must be verified in accordance with §7317.
- First remedy is a good plan of correction.

Informal Dispute Resolution

- Upon their receipt of the official Form CMS-2567, facilities must be offered an informal opportunity to dispute deficiencies with the entity that conducted the survey.
- If you win the IDR, you should receive a CMS-2567 with "deleted on it" but you request a new copy if you would like one.
- SNFs/NFs are provided the opportunity to request and participate in an Independent IDR if CMS imposes civil money penalties against the facility and these penalties are subject to being collected and placed in an escrow account pending a final administrative decision.
- All CMP funds are subject to escrow. If the nursing home elects not to request an Independent IDR or to appeal, then after any IDR (if requested), CMP amount becomes due and payable in accordance with the process in §7528.3.

Discount???

- A facility may waive the right to a hearing in writing within 60 calendar days from the date of the notice of imposition of the civil money penalty.
- If a facility waives its right to a hearing in writing within 60 calendar days from the date of the notice of imposition of the penalty, the regional office or the State Medicaid Agency reduces the civil money penalty amount by 35 percent. After receipt of the waiver, the regional office or the State Medicaid Agency notifies the facility of receipt of the waiver request.
- If a facility does not waive its right to a hearing in accordance with specified procedures, the civil money penalty is not reduced 35 percent.
**PAYMENT**

Payment of a per day civil money penalty is due 15 calendar days after substantial compliance is achieved when:

1. A final administrative decision, upholding the imposition of the civil money penalty, is made before the facility achieved substantial compliance;

2. The facility did not file a timely hearing request before it achieved substantial compliance; or

3. The facility waived its right to a hearing before it achieved substantial compliance.

However, the period of noncompliance covered by the civil money penalty may not extend beyond 6 months from the last day of the standard health survey.

**CHECK OR DEDUCT**

1. The civil money penalty is payable by check to CMS if the check is rendered by the due date.

2. After the due date of the penalty, the regional office or the State Medicaid Agency deducts the civil money penalty plus any accrued interest from money owed to the facility.

Many of you spend your days burning the candle at both ends

Or just putting out fires and you did not get anything that was on your list or what you intended to do done today.

But if your home gets a G level Tag, it is going to take up a lot more time.
SAMPLE SURVEY REPORT

QUESTIONS???

RESOURCES

5. The CMS web site where it discusses the new survey process: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Guidance-for-Providers/Downloads/Nursing-Homes.html