



**CALIFORNIA
HOSPITAL
ASSOCIATION**

*Providing Leadership in
Health Policy and Advocacy*

February 19, 2019

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 445-G
Washington, D.C. 20201

***SUBJECT: CMS-3367-NC, Accrediting Organizations Conflict of Interest and Consulting Services;
Request for Information; Federal Register (Vol. 83, No. 244) December 20, 2018***

Dear Administrator Verma:

On behalf of our more than 400 member hospitals and health systems, as well as their related post-acute care providers, the California Hospital Association (CHA) appreciates the opportunity to comment on the request for information (RFI) on the relationship between Medicare-approved accrediting organizations (AOs), their consultative entities and the health care facilities they accredit.

AOs play a crucial role in partnering with hospitals and CMS to ensure quality and safety for our patients. The integrity of the accreditation process is of utmost concern for regulators, providers and patients alike. However, hospitals also must expend tremendous resources on ensuring compliance with complex accreditation requirements, and benefit from the expertise of consultative services in providing education, training, publications and technical assistance to assist in understanding standards and preparing for surveys. At a time of tremendous change in our health care system, regulators, providers and the private sector must work more collaboratively than ever to ensure the safest and highest quality of care for our patients and communities. CMS can take steps to improve its oversight of the accreditation process while still allowing AOs — with their unique expertise — to offer consultative services to hospitals, without introducing unnecessary conflicts of interest.

Due to the complexity of the Medicare conditions of participation (CoPs) and conditions for coverage or certification (CfCs), AOs are in a unique position to provide this education and technical assistance. As the RFI states, some AOs provide fee-based consultative services to Medicare-participating health facilities on educational, performance improvement, and technical assistance polices. There is no law or regulation that prohibits AOs from providing these services under a fee-based entity. In California, hospitals often utilize fee-based consultative services provided by subsidiaries of AOs and find them extremely useful in understanding how to navigate and comply with accreditation standards.

CHA understands how there could be a public perception of conflicts of interest when a subsidiary of an AO consults with the hospitals it accredits. In anticipation of this perceived conflict of interest, some California hospitals utilize consulting services from AOs that are not their accrediting AO. Others report that the firewall between their accrediting AO and its consultative subsidiary is sufficient to prevent any such conflict of interest. While we do not believe that CMS should restrict the consultative activities

these subsidiaries can offer, the agency could take steps to improve the transparency of these relationships and implement a process for initiating conflict of interest complaints.

For example, some AOs have established firewalls to prohibit the exchange of information between their entities and avoid conflicts of interest. CMS notes that current regulations at §488.5(a)(10) require that the AO application information include the organization's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, among individuals who conduct surveys or participate in accreditation decisions. CMS could require that AOs with fee-based consultative entities also include information on their established firewall policies and procedures as part of their application. In addition, AOs could be required to make these policies publicly available.

Further, while we believe any conflict of interest to be rare, CMS could implement — through a notice and comment rulemaking period — a process under which a hospital could report a perceived or actual conflict of interest, without fear of retribution or jeopardizing their accredited status. This process could ensure that AOs are complying with their firewall policies and transparently hold AOs accountable for maintaining the integrity of the accreditation process.

CHA appreciates the opportunity to share our comments on perceived conflicts of interest between AOs and the facilities they monitor. If you have any questions, please do not hesitate to contact me at (202) 488-4688 or akeefe@calhospital.org.

Sincerely,

/s/

Alyssa Keefe

Vice President, Federal Regulatory Affairs