April 15, 2024

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

SUBJECT: CMS-3367-P, Medicare Program; Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions, Proposed Rule, Federal Register (Vol 89, No 32), February 15, 2024

Dear Administrator Brooks-LaSure:

On behalf of more than 400 hospitals and health systems, the California Hospital Association (CHA) appreciates the opportunity to provide comments on the Centers for Medicare & Medicaid Services' (CMS) proposed rule that would strengthen the oversight of accrediting organizations (AOs).

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 the utmost concern for regulators, providers, and patients alike. In general, CHA supports proposals that would prevent conflicts of interest, streamline survey processes, and ensure more consistency between AOs and CMS or state survey agency (SA) surveyors. While the policies proposed by CMS are applicable to AOs — such as The Joint Commission and Det Norske Veritas — CMS should consider how the proposed changes will affect hospitals and health systems that rely on the AO accreditation process to demonstrate their compliance with Medicare's Conditions of Participation (CoPs) and Conditions for Coverage (CfCs).

Proposal to Add Definition of "Unannounced Survey"

CMS notes that it has been a longstanding policy — as included within sub-regulatory guidance at section 2700A, chapter two of the State Operations Manual (SOM) — for CMS and SA surveys to be conducted unannounced. To provide clarity on its expectations for AOs and to mirror the processes used by SAs, CMS proposes to define the term "unannounced survey" in regulations as "a survey that is conducted without any prior notice of any type, through any means of communication or forums, to the facility to be surveyed, and therefore, is unexpected to the facility until the arrival onsite by surveyors. This also means that the accrediting organizations must schedule their surveys so that the facility is unable to predict when they will be performed."

499 So. Capitol Street SW, Suite 410, Washington, DC 20003 ▪ Office: (202) 488-3740 ▪ FAX: (202) 488-4418

1215 K Street, Suite 700, Sacramento, CA 95814 ▪ Office: (916) 443-7401 ▪ www.calhospital.org

CMS suggests that some AO practices such as providing a pre-arrival notification the day of an accreditation survey (usually no more than 60 minutes ahead), or permitting hospitals to identify a small number of black-out dates during which they could request AOs not conduct on-site surveys, enable providers to make unusual preparations for the survey that would not represent the typical condition of the provider and true nature and quality of care provided. However, hospitals have legitimate concerns that support the need for steps like limited pre-arrival notifications. As violence against health care workers is on the rise, a pre-arrival notification provided 30 to 60 minutes prior to surveyor arrival — including the identification of surveyors — allows security to ensure the appropriate personnel are permitted to access secure areas of the hospital and prevents imposters and intruders.

In addition, it is unrealistic to suggest that a 30-minute to 60-minute pre-arrival notice provides a hospital with sufficient time to conduct any unusual preparations not reflective of typical operations. However, such notice is beneficial to the overall survey process by allowing time for hospitals to take steps such as securing a meeting room for surveyors to work out of and ensure relevant staff who may be at a campus across town can arrive on site in a timely manner to ensure a smooth survey process for both the hospital and surveyors. In addition, at small, rural hospitals with limited resources and few staff members to oversee survey activities, permitting limited black-out dates ensures that staff can commit to taking time off and prevent burnout.

Conflict of Interest

CMS proposes several policies to address real or perceived conflicts of interest, including proposing requirements that AOs have conflict of interest policies and collect disclosures from employees each year. Among other requirements, AO surveyors would be prohibited from surveying any facility where they worked in the previous two years, and AOs would be required to have policies ensuring surveyors do not have any involvement with the survey process or decisions of that facility. These are reasonable policies that are broadly supported.

In addition, CMS proposes policies intended to address conflicts of interest between AOs and their affiliated fee-based consulting entities. Specifically, AOs would be prohibited from providing fee-based consulting services to any provider prior to its initial accreditation survey, or within 12 months of the next scheduled AO survey. The proposed rule does not prohibit providers from hiring other third-party fee-based consulting services prior to initial accreditation or subsequent surveys.

Hospitals must expend tremendous resources to ensure compliance with complex accreditation requirements. They benefit from the expertise of consultative services in providing education, training, publications, and technical assistance to assist in understanding standards and preparing for surveys. Due to the complexity of the Medicare CoPs and CfCs, AOs are in a unique position to provide this education and technical assistance. Importantly, hospitals rely on these services not only to prepare for surveys, but to identify and implement opportunities for quality improvement.

While it is understandable that there could be a public perception of conflicts of interest when a subsidiary of an AO consults with the hospitals it accredits, hospitals report that "firewall" between their accrediting AO and its consultative subsidiary is sufficient to prevent any such conflict of interest. CHA has long supported additional requirements that would formalize AO "firewall" policies between AOs and their fee-based consulting entities. However, CMS should consider how it could be disruptive for a

hospital to switch vendors for quality improvement consultants every year or two depending on survey timing.

Proposal to Revise the AO Survey Validation Program

Under current policy, CMS conducts validation surveys on a representative sample of hospitals and other providers each year. During validation surveys, SA staff and sometimes CMS surveyors conduct a full review of the organization approximately 60 days after the organization completes accreditation. While the intent of the validation process is to evaluate the performance of the AO, hospitals can receive citations during validation surveys. In 2018, CMS also began piloting a direct observation model in which SAs accompanied the AOs on their surveys to observe and evaluate AO surveyors. CMS believes there is value to both types of validation surveys in assessing AO performance. As a result, CMS proposes to make a two-pronged validation survey process permanent. That is, CMS would conduct both "look back" surveys like what it does now, along with direct observation surveys like what it piloted in 2018.

CHA members support the use of direct observation surveys, which are more likely to appropriately assess the performance of the AOs and are less disruptive to hospitals operations than multiple surveys in a short period of time. CMS should ensure it has the resources to prioritize direct observation surveys and consider phasing out the use of "look back" surveys to assess AO performance.

CHA appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact me at mhoward@calhospital.org or (202) 488-3742.

Sincerely,

/s/
Megan Howard
Vice President, Federal Policy