

June 8, 2017

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Via Electronic Submission

RE: CMS—1677—P
Proposed Changes to 42 C.F.R. § 488.5
Relating to Survey and Certification Requirements

Dear Ms. Verma

The Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) greatly appreciates the opportunity to submit comment to the Centers for Medicare and Medicaid Services (CMS) regarding the recently proposed changes to 42 C.F.R. § 488—Survey, Certification, and Enforcement Procedures.¹

The Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) is a private, 501 (c)(3) non-profit accreditation organization formed in 1979. Since its inception, the AAAHC has promoted a voluntary, peer-based, consultative, and educational survey process to advance patient care. These values hold true today, as embodied in its mission statement: *Improving health care quality through accreditation*. With more than 6,000 accredited organizations in a wide variety of ambulatory health care settings, AAAHC is a leader in developing standards to advance and promote patient safety, quality care, and value for ambulatory health care through peer-based accreditation processes, education, and research.

As an accreditation organization, AAAHC supports CMS in addressing its concerns with transparency and is willing to partner with CMS to identify opportunities to use data to support consumer decision-making so that consumers can receive the highest quality care. However, for the following reasons, AAAHC strongly urges CMS to withdraw the proposed changes to 42 C.F.R. § 488.5 that would require accreditation organizations (AOs) to post final accreditation

¹ Application and reapplication procedures for national accrediting organizations, 82 Fed. Reg. 81, 20143 – 20145 (April 28, 2017) (to be codified at 42 C.F.R. § 488).

survey reports (Survey Reports) and acceptable plans of correction (PoCs) for organizations participating in the Medicare deemed status program on the AO public-facing web site²:

- Releasing data without explanation, tools, benchmarking, or any methodology for comparison will have the opposite effect of the intended goal of transparency to assist with consumer decision-making, and will instead result in consumer confusion;
- Financial implications resulting from IT and staffing requirements necessary for accreditation organizations to implement the requirement will require diversion of resources toward compliance with this requirement away from program development supporting the AAAHC mission;
- The proposal does not appear to provide the accreditation organizations that hold current deeming authority equal opportunity to implement this proposed requirement and could interfere with the AAAHC ability to manage and control proprietary assets;
- It is not clear how the ability to post survey reports and PoCs on the AAAHC website would assist CMS in determining if the AAAHC accreditation program satisfies CMS requirements.

Transparency, Consumer Decision-Making and Confusion

AAAHC finds the CMS commitment to transparency laudatory; however, we are concerned that this requirement will, in fact, cause more confusion among consumers. Not only does significant variation in survey report format exist across accreditation organizations, for a consumer to compare providers for the intended purpose and through the means proposed, one would first require knowledge and understanding of whether the provider is accredited and whether the accreditation is through the Medicare deemed status program. Thus, the requirement for AOs to post on individual websites will multiply the difficulty for consumers in researching organizations by creating various paths to incomparable information. While AAAHC supports CMS in its intention to provide consumers with data on the Medicare providers and suppliers, AAAHC respectfully recommends that CMS identify alternative means for reporting data that is both user-friendly and relevant to consumer decision-making.

CMS cites concerns that because more organizations are becoming accredited, fewer survey reports are available to consumers to assist in the decision-making when selecting a health care facility.³ AAAHC supports CMS in its initiative to provide a more transparent, “comprehensive picture of health care data to health consumers and the public in general”⁴; however, we feel that

² *Id.*

³ *Id.* at 20144 (“As the number of health care facilities participating in Medicare by virtue of their accreditation and deemed status increases, the number of survey reports and acceptable PoC available to health care consumers decreases.”).

⁴ *Id.*

justification or evidence that consumers would, in fact, use or compare the survey data is necessary. Before such a requirement is implemented, AAAHC recommends that evidenced-based data on consumer use of survey reports or survey data in the healthcare decision-making process be researched to justify the implications of this proposal.

In the proposal, CMS mentions “an increasing concern in terms of AO disparity rates based on the AO deficiency findings compared to serious, condition-level deficiencies found by the State Survey Agencies”⁵. AAAHC respectfully disagrees that a correlation exists between the availability of more information and a reduction in concerns regarding disparity rates. AAAHC recommends that any concerns regarding disparity rates should be addressed through program improvement and welcomes any opportunity to assist CMS in such an initiative.

Cost Implications

CMS has recommended that AOs submit comments⁶ on estimated costs for posting survey reports and corresponding PoCs on individual AO websites. AAAHC is unable to provide specific cost information to CMS for public viewing, as AAAHC regards such specific information as proprietary to AAAHC; however, we must note that Information Technology (IT) services, programs, and improvements are often the highest cost services utilized by accreditation organizations to support operations.

Online posting of survey data, as proposed, could require the implementation of new IT resources and engagement of additional staff to manage this requirement. There are several unknown outcomes that would further result in costs to the AOs including, but not limited to, increased inquiries via e-mail or telephone from lawyers and consumers with questions or concerns regarding survey reports and survey process, as well as the cost to redact certain confidential information from the survey reports.

AAAHC urges CMS to consider that AAAHC financial and other resources required to implement this requirement would necessitate the diversion of resources toward compliance with the proposed posting requirement and away from support of the AAAHC mission, thereby directly impacting budget, innovation, and development of programs in support of its mission.

Competition in the Accreditation Industry

The proposal to add a requirement at 42 C.F.R. § 488.5 would require AOs which are applying or re-applying for deeming authority to agree that they will make “all Medicare provider or supplier final accreditation survey reports as well as acceptable PoCs publicly available on its Web site...”⁷ AAAHC is concerned about the impact the proposed survey data disclosure requirements at 42 C.F.R. § 488.5 will have on the ability of each accreditation organization to fairly compete.

⁵ *Id.*

⁶ *Id.* at 20227 (“We are seeking public comments, particularly from AOs, regarding the potential initial cost of modifications to the AOs’ existing public Web sites and the ongoing cost associated with upholding survey reports and PoCs.”)

⁷ *Id.* at 20144.

First, an implementation timeline or plan is not identified in the proposal, creating a presumption that the AOs would all be immediately subject to the proposed requirement; however, currently, approved AOs are scheduled for different deeming authority reapplication timelines. If the rule applies to all AOs upon adoption, an accreditation organization with an upcoming reapplication date would not be afforded the same opportunity or length of time to budget for and implement the proposed requirement as compared to other accreditation organizations that have future reapplication dates.

This could conceivably provide those AOs holding current deeming authority, but a later reapplication date, with a competitive advantage through which an AO with an earlier reapplication would face cost and program development impact ahead of other AOs. AAAHC requests information regarding whether CMS has developed implementation expectations for this proposed requirement to post survey reports and acceptable PoCs.

Further, AAAHC supports competition in the accreditation industry and the ability of providers and suppliers to choose the accreditation organization that offers programs that would be the best fit for its patient population and practice setting. AAAHC is concerned that the implementation of the proposed requirement to post survey reports and PoCs is a barrier to accreditation organizations wishing to apply for deeming authority. If an accreditation organization is unable to comply with this requirement as written due to cost or other factors, it appears that non-compliance with this requirement alone would deem an accreditation organization automatically ineligible to apply or re-apply for deeming authority. If this is the case, this proposed rule could function to limit the accreditation organizations that apply to obtain deeming authority from CMS, further decreasing the number of accreditation organizations available from which providers and suppliers may choose.

Finally, AAAHC standards and other information in survey reports is proprietary to AAAHC and AAAHC must maintain control over the release of its assets. Requiring AAAHC to post survey reports and PoCs on our website would restrict AAAHC in its ability to make strategic and legal decisions. It would directly impact the ability to protect AAAHC assets and remain competitive in the accreditation market.

AAAHC respectfully recommends that CMS consider how the proposed rule could impact competition in the accreditation industry and the need for the AOs to maintain control over release of proprietary information to the public.

Disclosure Requirement Unnecessary to Medicare Deeming Authority Determination

While AAAHC agrees that CMS maintains the ability to determine “other factors”⁸ when considering an accreditation organization for deeming authority, we disagree that a requirement such as the proposal to accreditation data falls within the purpose of the deeming authority requirements,

A national accrediting organization applying to CMS for approval or re-approval of an accreditation program under § 488.4 must furnish CMS with all of the following information and materials to demonstrate that the program provides reasonable assurance that the entities accredited under the program meet or exceed the applicable Medicare conditions or requirements.⁹

AAAHC urges CMS to consider whether the ability to post certain information on its web site would support a determination regarding whether an accreditation program provides reasonable assurance that the entities accredited under the program meet or exceed the applicable Medicare conditions, as required under 42 C.F.R. § 488.5(9)(a). While CMS has the authority to require that accreditation organizations holding deeming authority comply with rules and regulations promulgated by HHS¹⁰, a requirement to post the survey reports on an AO web site bears little connection to the ability of an accreditation organization to administer CMS-compliant surveys.

AAAHC respectfully requests that CMS consider how this proposed requirement would be necessary to determine whether an accreditation program meets or exceeds the applicable Medicare conditions or requirements.

Final Recommendation: Expert Panel

AAAHC supports CMS in the idea that improving transparency of the overwhelming amount of health care data within the industry holds great potential for providing better opportunity for consumer decision-making. Any effort to improve transparency of health care data is most effective when subject matter experts and affected stakeholders craft and implement solutions together.

As such, AAAHC respectfully recommends that CMS consider bringing together accreditation organizations, providers and suppliers, information technology experts, consumer research groups and others with expert knowledge of access to data available in the health care industry to assist CMS with identifying and developing opportunities for providing consumers with the appropriate data to support transparency and decision-making.

⁸ Social Security Act, 42 U.S.C. § 1395bb (2008).

⁹ 42 C.F.R. § 488.5(9)(a).

¹⁰ 42 C.F.R. § 488.3 (2015); 42 C.F.R. § 488.4 (2015).

Thank you for the opportunity to provide input into the proposed rule. We look forward to continuing to assist CMS in its mission to advance health care quality and value. Please do not hesitate to contact Ann Carrera, Senior Counsel, Legislative and Corporate Affairs, at (847)-324-7703 or acarrera@aaahc.org if we can be of further assistance.

Sincerely,



Kenneth M. Sadler, DDS, MPA
AAAHC Chair of the Board



Therese Poland
AAAHC Acting President/CEO