



ACCREDITATION ASSOCIATION  
for AMBULATORY HEALTH CARE, INC.

August 31, 2018

The Honorable Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1689-P  
Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Via online submission at: <https://www.regulations.gov/document?D=CMS-2018-0077-0002>

RE: **CMS—1689—P Medicare and Medicaid Programs: CY 2019 Home Health Prospective Payment System Rate Update and CY 2020 Case-Mix Adjustment Methodology Refinements; etc.**  
Proposed Changes to 42 C.F.R. § 488 Relating to Training Requirements for Surveyors of National Accrediting Organizations

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. § 488.5—Survey, Certification, and Enforcement Procedures.<sup>1</sup>

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, 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.

As an accreditation organization (AO), AAAHC thoroughly recognizes the challenges to addressing “disparity rates” (the disparity in validation survey findings between accreditation organization surveyors and state agency surveyors). AAAHC supports CMS efforts to reduce disparity rates; however, for the reasons described below, AAAHC strongly urges CMS to withdraw both the proposal for a new provision at 42 C.F.R. § 488.5(a)(7) related to surveyor training and the new provision 42 C.F.R. § 488.5(a)(18)(iii) concerning accredited deemed facility withdrawal effective dates.

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<sup>1</sup> Training Requirements for Surveyors of National Accrediting Organizations, 83 Fed. Reg. 134, 32340 – 32522 (July 12, 2018) (to be codified at 42 C.F.R. § 488).

## **Cost Implications**

### **Incomplete Cost Estimates**

CMS is correct to assume that requiring AO surveyors to complete CMS training modules will increase AO costs; however, the CMS rule implementation cost estimates reflect a calculation from which AAAHC cannot estimate rule compliance costs. Cost estimates described in the proposal account only for surveyor compensation, and significantly underestimate the actual costs to AOs related to implementation.

While AAAHC commends CMS in its attempt to estimate related AO implementation costs, it appears that the proposed rule overlooks that each AO, as a private entity, employs its own unique, proprietary method for establishing surveyor pool structure and programming to best serve customers, and it is those proprietary methodologies that allow each AO to maintain the ability to compete in the Ambulatory Surgical Center (ASC) market. Thus, any cost estimates based solely on surveyor compensation and time as an attempt to create a one-size-fits all cost estimate while disregarding administrative, technological, and staffing impacts related to managing surveyor compliance with the proposed requirements, cannot accurately reflect the true costs an AO faces if the proposed requirements are implemented. Proposal ambiguity concerning specific programmatic and implementation elements (as described later) also complicates the ability of AAAHC to accurately assess compliance costs in response to CMS cost estimates.

AAAHC urges prudent and comprehensive deliberation concerning any rule which would substantially increase AO costs as the entire health care system must be considered when such costly proposals are made. Regrettably, health care facilities would likely bear the cost burdens of compliance with this proposal as costs are passed through to facilities. In turn, patients would ultimately bear the increased costs of compliance with the proposed rule as health care facilities pass the costs down to health care consumers.

## **Lack of Clarity**

### **Ambiguity Concerning Time Frames**

AAAHC respectfully requests that CMS provide more clarity concerning anticipated rule implementation time frames. The proposed rule does not address how much time AOs would be given to implement the rule, if adopted. AAAHC anticipates substantial financial, time, and resource costs necessary for the implementation of this rule.

The proposed rule also indicates that an AO would simply have to agree during the deemed application process that its surveyors have completed CMS training. However, the rule is unclear about when precisely AOs would be required to implement usage of CMS training modules into AO surveyor curriculum. Because AOs are subject to different application expiration and deemed status approval dates, the ambiguity over effective date could lead to staggered implementation dates by the AOs as they adapt training processes to align with their own organization's CMS application submission deadlines. If AOs implement the rule under staggered time frames, competitive advantages and disadvantages will be created. AOs with more time before their next

CMS submission deadline will benefit from increased planning, budgeting, and implementation time; organizations with less time before their next CMS submission deadline will suffer a competitive disadvantage. AAAHC respectfully requests more clarity concerning effective dates and implementation time frames.

*Ambiguity Concerning CMS Online Training Programs*

While AAAHC supports the CMS aim of reducing disparity rates, AAAHC cannot support the proposal as written due to its vagueness. The proposed rule offers little guidance on CMS implementation of this new requirement.

CMS states that it believes “that the AO’s disparity rate would be decreased if all surveyors took the same training”; however, the proposed rule does not specify the CMS online training courses for which it expects completion. The rule would require AO surveyors to complete “relevant program specific CMS online trainings established for state surveyors.”<sup>2</sup> The proposed rule anticipates that “the surveyors for AOs that accredit Medicare certified providers would need to take the same number and type of surveyor training courses as the SA surveyors (that is—approximately 10 courses).”<sup>3</sup> However, the proposed rule is ambiguous about the true number of CMS training modules that State Agency (SA) surveyors must take, stating: “We estimate that each SA surveyor takes approximately 10 of these courses.”<sup>4</sup>

Although the proposed rule extrapolates its cost estimates using ten (10) as the number of required trainings, usage of the term “estimate” suggests ambiguity over a number that CMS should precisely identify. The ambiguity in the rule makes it unclear whether SAs currently exercise flexibility over choosing the subject and number of training modules. If surveyors do, in fact, hold flexibility in their training selections, variability in surveyor selections would seem to undermine the proposed goal of uniformity in training. Moreover, neither the proposed rule nor the CMS website precisely identifies which 10 courses would be required for AO surveyors to complete. The proposed rule requires completion of “relevant program specific CMS online trainings established for state surveyor,” but the variety of online training programs offered and the lack of specificity over the precise training modules required per program creates confusion over which precise training elements are required for full rule compliance. AAAHC respectfully requests more clarity concerning training requirements including course enrollment expectations, frequency of course completion, and clarification regarding whether CMS intends to implement a reporting mechanism for AOs to validate surveyor course completion.

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2 Id. at 32515.

3 Id. at 32478

4 Id.

## **Unclear Correlation between Additional Training and Disparity Rate Reduction**

### **Unclear Disparity Rate Root Cause**

AAAHC recognizes that disparity rates are a constant challenge for CMS and AOs, and that root cause factors driving high disparity rates are complex and multi-faceted. While surveyor training may be a factor that influences disparity rates, AAAHC questions whether mandating AOs to require that surveyors complete CMS training modules will actually reduce the disparity rate--the hypothesis that mandating additional AO surveyor training will lower disparity rates is untested and unproven, and the basis for the hypothesis is unclear. Further, CMS notes that surveyor training and education provided varies from AO to AO; however, AAAHC fails to see the correlation between different AO surveyor training programs and disparity rates when the disparity rate is a comparison of an SA survey result against an AO survey result and not a comparison between AOs. Moreover, unknown or alternative factors may truly drive high disparity rates. Adopting the proposed rule carries the potential to substantially affect AO operational and compliance costs while leaving questions of effectiveness and implementation unclear.

While CMS states that this training requirement is proposed to address disparity rates, we request that CMS describe how it intends to monitor and measure this new requirement as it relates to a reduction in disparity rate.

Moreover, we suggest that CMS consider consequences of requiring AOs to implement potentially costly training programs, including the impact of both diverting funds away from quality improvement programming and increasing costs to consumers, under what seems to be only a hypothesis that this will, in fact, reduce the disparity rate. The ambiguities in the proposal essentially create further opportunity for non-uniformity in surveyor training across the industry. Any non-uniformity in training could reduce the meaningfulness of any presumed links between surveyor training mandates and disparity rates that CMS hopes to identify and impact. We recommend that CMS first establish a measurable correlation between the proposal and the outcome before CMS proposes to require AOs to implement any costly program.

### **2 C.F.R. § 488.5(a)(18)(iii) – AO Statement Regarding Accredited Organization Withdrawal**

AAAHC urges withdrawal of the proposed new provision found at 42 C.F.R. § 488.5(a)(18)(iii) concerning accredited deemed facility withdrawal effective dates.

While AAAHC supports CMS in addressing facility concerns, the proposal as written undermines the autonomy of AAAHC to enforce its own policies. Each AO develops its own policies and procedures related to accreditation termination effective dates, which CMS subsequently approves. In addition, this proposal would allow facilities to circumvent the mechanisms AOs have in place for ongoing review of accredited facilities. The rule as written would require AAAHC to maintain a facility's accreditation status regardless of AAAHC policies and procedures related to termination of a facility's accreditation status. Throughout the accreditation process, participating facilities are obligated to comply with AAAHC standards, policies, and procedures until an awarded accreditation term expires or terminates and therefore, this proposal would conflict with AAAHC operation of its accreditation program and its authority to make accreditation decisions.

As an accreditation organization, AAAHC commends CMS as it addresses quality improvement in this program, but strongly urges CMS to withdraw the proposed rules discussed herein. We encourage CMS to engage Accreditation Organizations directly in both the initiative to reduce disparity rates and on any initiatives that may impact AO accreditation program operations.

Thank you for the opportunity to provide input into the proposed rules. We look forward to continuing to collaborate with 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](mailto:acarrera@aaahc.org) if we can be of further assistance.

Sincerely,



Noel Adachi, MBA  
President & CEO



Arnaldo Valedon, MD  
AAAHC Chair of the Board