



February 19, 2019

VIA ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-3367-NC  
P.O. Box 8016  
Baltimore, MD 21244-8010

**Re: [CMS-3367-NC] Medicare Program: Accrediting Organizations Conflict of Interest and Consulting Services; Request for Information**

Dear Administrator Verma:

The Medicare Rights Center (Medicare Rights) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS's) **Accrediting Organizations Conflict of Interest and Consulting Services; Request for Information**. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Medicare Rights provides services and resources to three million people with Medicare, family caregivers, and professionals each year.

Medicare is a valuable, trusted program that provides health care coverage to over 59 million older adults and people with disabilities. People rely on Medicare for high-quality care and entrust CMS with providing robust oversight that ensures beneficiary health and well-being are always at the forefront.

This reliance and trust can be put at risk if beneficiaries perceive conflicts of interest or bias in the program. We are encouraged that CMS has issued this RFI to determine whether Accrediting Organizations that provide guidance and other consulting to the facilities they accredit could create actual or perceived conflicts of interest. For the reasons outlined below, we conclude these relationships do create a perceived conflict of interest and should be barred.

In order to participate in the Medicare program, most providers—including providers of services, suppliers, facilities, clinics, agencies, or laboratories—must first be certified by State Survey Agencies or accredited by CMS-approved national accreditation organizations (AOs). Most providers may choose between the state agency or the AO at their discretion. However, certain suppliers and laboratories must be accredited by AOs, creating a built-in market for the fee-based accreditation services.

In order to audit AO results and ensure the AO program is sufficiently robust, CMS compares state survey agency results to AO results for the same facilities and identifies missed deficiencies by the AO.<sup>1</sup> The 2017 disparity rates— Hospital rates (46 percent); Psychiatric hospitals (57 percent); Critical Access Hospitals (44 percent); Home Health Agencies (18 percent); Hospices (18 percent); Ambulatory Surgery Centers (35 percent)—reveal disturbingly significant variation in the survey results from AO to state survey agencies.

These missed deficiencies can call the AOs' neutrality into question. They could gain, under some circumstances, from ignoring the deficiencies of certain providers. For example, in addition to their accreditation work, some AOs provide fee-based consultation, including survey simulations, review of policies and processes, technical assistance and identification of trouble spots, and educational services.

CMS seeks input on whether there is a perceived conflict of interest in AOs providing fee-based consultative services to the facilities they accredit. We do perceive such a conflict. For instance, an AO could downplay deficiencies during the survey of a consultative client in order to increase the apparent efficacy of its consulting services. Or, perhaps more undetectably, an AO could play up the deficiencies of non-clients in order to increase the apparent value of the consulting services to providers.

To avoid these conflicts, CMS should follow its own Quality Improvement Organizations (QIO) example.<sup>2</sup> QIOs are prohibited from subcontracting with a health care facility to perform any case review activities except for the review of the quality of care. At a minimum, AOs should be prohibited from providing consultative services to any provider they have accredited, and from accrediting any provider they have provided with consultative services. This would create a bright line and would also require the AOs to disclose information about any consultative services provided by the AO to ensure there is no overlap.

CMS also seeks input on whether the ability of an AO to collect fees for consultative services from entities they accredit could degrade the public trust inherent in an AO's CMS-approved accreditation programs. We believe that the trust that Medicare has earned must be maintained through robust oversight and elimination of bias and perceived bias. The business connection between the provider and the AO creates a relationship that the AO could have incentive to manipulate. By the same token, providers may not have an actual benefit from

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<sup>1</sup> FR 65333.

<sup>2</sup> FR 65334.

hiring the same AO to consult and accredit, but if they perceive a benefit, fragile public trust can be lost.

CMS seeks comment on what the appropriate consequences or impacts should be in the event of a conflict. In such circumstances, accreditation must be voided. Repeat violations should lead, at minimum, to the rescission of CMS's approval of the AO's voluntary accreditation program.

Thank you for this opportunity to respond to the RFI. As with all Medicare statutes, regulations, and guidance, rule changes related to this RFI must keep beneficiary needs and safety—both physical and financial—at the forefront. The importance of protections against conflicts of interest cannot be overstated. Because of this, we urge CMS to investigate closely the potential for perceived conflict and to act appropriately to protect the trust millions of people place in the Medicare program. For additional information, please contact Lindsey Copeland, Federal Policy Director at [LCopeland@medicarerights.org](mailto:LCopeland@medicarerights.org) or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at [JCarter@medicarerights.org](mailto:JCarter@medicarerights.org) or 202-637-0962.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Baker". The signature is fluid and cursive, with a large loop at the end of the last name.

Joe Baker  
President  
Medicare Rights Center