



April 15, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20101

RE: Medicare Program; Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions (CMS-3367-P)

Submitted electronically via: <https://www.regulations.gov>

Dear Administrator Brooks-LaSure,

On behalf of our more than 5,400 nonprofit and mission-driven aging services providers from across the continuum of aging services, including home health and hospice, and our 36 state partners in 41 states, LeadingAge appreciates the opportunity to comment on proposed changes to oversight for Accrediting Organizations (AO). More than 60 percent of hospices and nearly half of all home health agencies choose to have their organizations certified and surveyed by AOs.

LeadingAge supports the choice to work with an AO to affirm compliance with Medicare Conditions of Participation (CoPs). Many members shared positive stories of how AOs helped them better understand their deficiencies and achieve robust compliance in follow up surveys. The additional cost to providers to be accredited is well worth the extra support to improve quality and compliance to serve beneficiaries. However, we acknowledge and agree with the Centers for Medicare and Medicaid Services' (CMS) concerns that oversight of these entities has led to program integrity concerns. In particular, one accrediting body was responsible for nearly half of the fraudulent hospices accredited in California, Nevada, Arizona and Texas in 2022. The growth of hospice across these four states raised alarms and initiated a nation-wide program integrity effort.¹ With this in mind we provide the following comments on CMS' proposals.

Unannounced Survey

CMS proposes to add a new definition of "unannounced survey" to prevent providers from making any unusual preparations for the survey that would be inconsistent with the typical nature and operational performance. Our members did share that working with AOs to accommodate schedules of key staff including the administrator contributed to successful surveys, however, LeadingAge supports CMS' proposal to change the definition of "unannounced" to create more consistency between AOs and State Agencies (SA) surveys hospice and home health providers.

As we alluded to earlier, the proliferation of fraudulent hospices, especially those that only maintain a facade of a functioning office (or group together in a single office with no apparent staff), highlights the need for stricter adherence to statute to ensure CoPs are properly enforced. We would also encourage

¹ Corrigan, Dara A. and Hughes, Dara L., MD, MPH. Centers for Medicare and Medicaid Services (CMS). "CMS is Taking Action to Address Benefit Integrity Issues Related to Hospice Care." <https://www.cms.gov/blog/cms-taking-action-address-benefit-integrity-issues-related-hospice-care>

CMS to apply the same expectations outlined in the State Operations Manual for SAs regarding termination of non-compliant providers. Specifically, if a provider denies entry (42 CFR § 1001.1301) or otherwise tries to limit required survey activities (42 CFR § 489.53(a)(13)), such as allowing copying of records or information during the survey, these actions can be grounds for termination of provider agreements (42 CFR § 489.53(a)(18)).

Conflict of Interest Policies – Fee-Based Consulting

LeadingAge supports efforts to add specificity to the Conflict of Interest (COI) policies for AOs building on the CY 2022 Home Health Prospective Payment System Rate Update² which finalized similar COI for hospices. With regard to these practices for AOs, we were not clear from the information in the rule to what extent available data indicates that the consulting services of the AOs are a key contributor or facilitator of abusive practices as opposed to legitimate educational offerings. We recognize some health care providers have up to seven choices of AOs, however, in the home health and hospice industry there is only one AO with a fee for service consulting company and their services are largely cost-prohibitive for all but the largest not-for-profit providers. Additionally, clarity on CMS' concerns would be valuable in providing a response.

LeadingAge supports the implementation of “firewall” protections between an AO's fee-based consulting services and their survey responsibilities. It is our understanding however, that two hospice/home health AOs provide educational programs that instruct individuals on best practices for achieving accreditation standards. These educational programs can provide immense value for provider organizations ensuring that future compliance with CoPs is clearly understood. The unique collaboration and teaching ethos of AOs is often a key reason providers decide to pursue accreditation. This should be enhanced and supported, not restricted. We strongly encourage CMS not to create barriers to these trainings or restrict AOs ability to provide these educational opportunities to providers.

Survey Process Comparability

As previously mentioned, LeadingAge supports CMS' efforts to create comparability between the AO and SA process but ask for transparency with regards to these efforts. For example, we applaud CMS for requiring a crosswalk between the CoPs and AO standards, but these crosswalks should be made public to ensure providers have complete and accurate information when choosing between using an SA or AO to meet their certification needs. Additionally, LeadingAge supports the proposal to strengthen the Survey Process Comparability as outlined in §488.4 and §488.5. Requiring AOs to apply Medicare CoPs as their minimum standard and delineating any additional standards would clearly differentiate and achieve the goals of the deemed status designation. Furthermore, requiring AOs to follow the processes set down in the State Operations Manual for SAs will be invaluable for all hospices and home health agencies to clearly understand expectations of any surveyor and make the transition between the two more seamless.

² Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID-19 Reporting Requirements for Long-Term Care Facilities. <https://www.federalregister.gov/documents/2021/11/09/2021-23993/medicare-and-medicare-programs-cy-2022-home-health-prospective-payment-system-rate-update-home>

Deemed Status for Skilled Nursing

LeadingAge serves the entire continuum of Medicare certified aging services providers including skilled nursing facilities (SNFs). Currently, there are entities that accredit skilled nursing facilities, but no AO with a SNF accreditation has deemed status. We would like to take this opportunity to encourage CMS to pursue granting deemed status for at least on AO offering SNF accreditation. Not only would SNFs greatly value the unique opportunities presented by deemed status survey and certification, including the collaborative and educational nature of the relationships, but adding an additional option to survey and certification for the setting could alleviate pressure from deeply underfunded and over extended SAs.

In addition, there are many payers outside traditional Medicare looking to incorporate accreditation standards as part of their payment structures. In Connecticut, LeadingAge members have noted that Medicare Advantage plans are looking at a SNFs accreditation status as a sign of quality and contractual preference. In Florida, the state Medicaid implemented a payment increase for SNFs that received accreditation.³ This is a clear indication that payers are interested in additional resources to define quality providers in the space. However, many non-profit, mission driven agencies cannot commit to the additional requirements of an accreditation program while also complying with SA required surveys. If the option was available for accreditation with a deemed AO that would also conduct survey and certification, many SNFs in our membership would pursue the opportunity to highlight their quality.

We thank you for your consideration of the issues highlighted above. My contact information is below if you wish to discuss any of the recommendations.

Sincerely,



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³Florida Administrative Code & Florida Administrative Register. Rule Title: Payment Methodology for Nursing Home Services. Final 59G-6.010 <https://www.flrules.org/gateway/ruleno.asp?id=59G-6.010>