



15 April 2024

Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Submitted Electronically

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

Dear Administrator Brooks-LaSure:

The National Association for Behavioral Healthcare (NABH) appreciates the opportunity to submit comments on the [proposed rule](#) that would improve and make more consistent the Centers for Medicare & Medicaid Services' (CMS) oversight of accrediting organizations (AO). Of particular interest to our members, among the nine AOs that would be affected by this rule, is The Joint Commission, which accredits inpatient psychiatric hospitals and psychiatric units within general acute-care hospitals.

In general, NABH supports the rule's overall direction, which is to improve the accountability and transparency of AO survey and accreditation activities. It is appropriate for CMS to establish consistent protocols and criteria for the multiple healthcare provider surveyors under its purview, including consistency across The Joint Commission and state survey agencies that survey and accredit inpatient psychiatric facilities (IPF). In addition, we appreciate the goal of aligning AO and Medicare conditions of participation criteria, which has the potential to materially reduce administrative burden.

Decrease Disparities Across Surveyors

NABH appreciates that the proposed rule recognizes the current disparity of survey findings among The Joint Commission (and other AOs) and state survey agencies. Such disparities raise red flags about the misaligned criteria, as well as the reliability of relevant surveyor training programs and preparedness of individual surveyors.

Current inadequacies have resulted in inconsistent, and therefore at least partially inaccurate, survey findings. **This entire process warrants closer examination by CMS of the overall scope and details of these inconsistencies – and the public sharing of related findings with stakeholders. In the meantime, CMS should halt the concurrent application of both sets of standards until the standards are aligned. During this interim, a streamlined and unified set of criteria should be used to avoid providers bearing the burden of this policy misalignment. Until that happens, IPFs will continue to waste resources in attempting to satisfy inconsistent criteria – often an impossible task that results in an unsatisfactory outcome.**



Perpetuating this wasteful scenario only misdirects IPFs' limited time and resources away from delivering the critical behavioral healthcare services needed to address our nation's severe mental health crisis, which includes increasing mortality rates due to overdoses and suicides.

Given our concerns, NABH supports CMS' efforts to strengthen AO performance validation by following an AO survey, using several methods to validate that survey's accuracy. Such an examination should include inter-rater-reliability analyses to help confirm whether the current level of reliability meets generally accepted statistical standards. If not met, these analytical findings should help identify specific AOs, survey practices, and individual auditors who are below-standard.

Remove and Prohibit Conflicts of Interest

NABH strongly encourages CMS to ensure that AOs have zero conflict of interest by identifying and halting any survey practices and outcomes that could generate downstream revenue to an AO from IPFs and other providers that received negative audit findings. Establishing and maintaining this critical check and balance should be a top priority for CMS. This practice should include prohibiting fee-based consulting services that AOs provide to IPFs and other providers following an accreditation determination. Specifically, CMS must prohibit AO owners, surveyors, and other employees –including their immediate family members who have an interest in or relationship with a surveyed healthcare facility – to have direct or indirect input on survey results. This prohibition must apply to pre- or post-survey activities of an IPF along with a ban on access to all survey records.

Strengthening Oversight of AOs

NABH generally supports CMS' proposals to strengthen its oversight of The Joint Commission and other AOs. For example, we support the alignment of accreditation criteria with the Medicare conditions of participation for psychiatric hospitals and other applicable hospital requirements, to the extent feasible. In addition, when an AO fails to meet CMS' standards, it is appropriate for CMS to share publicly an AO's plan of correction.

Reduce Administrative Burden

We appreciate that the proposed rule would reduce administrative burden by streamlining the overall survey framework. We also like that the rule would clarify the following core activities that accreditation surveys should evaluate, which would increase consistency and accuracy:

- Pre-survey preparation;
- Offsite preparation;
- Entrance interview and activities;
- Information gathering and investigation;
- Analysis of information;
- Exit conference;
- Post-survey activities; and
- Statement of deficiencies-related activities.



Clarifying these essential survey actions also will help CMS compare survey findings between SAs and AOs in a comparable manner, which would be useful for process improvements to address currently inadequate survey processes.

Implement Consistent Survey Protocols and Surveyor Training

NABH supports CMS' proposal to align the survey protocols of AOs with those that state surveyors use. This gain in efficiency would benefit all stakeholders including our IPF members and the surveying entities. In addition, applying consistent basic training for AO and state surveyors would increase accuracy and cross-agency consistency of survey findings.

In particular, surveyor training should include a post-training validation that certifies only those surveyors who possess adequate knowledge or relevant criteria and readiness to conduct a survey in the field. We also urge CMS to mandate that IPF surveyors validate adequate knowledge on unique IPF policy, operational factors, and elements of the patient population profile, relative to, for example, their treatment of high-intensity patients, including patients who may be a harm to themselves or others, and other unique IPF variables.

Clarify Protocol for Unannounced Surveys

NABH members have reported the inconsistent implementation of unannounced Joint Commission surveys, which has led to confusion in the field. This is why we call on CMS to clarify its policy for unannounced surveys, including accommodations that recognize that IPFs can experience crisis scenarios that would not allow its leadership to concurrently respond to on-site surveyors in a timely fashion.

Thank you for considering NABH's recommendations on this important rule. Prior to finalizing this rule, we urge CMS to work with providers to confirm the nature of current survey discrepancies and opportunities to make practical improvements to these protocols. Please contact me at 202-393-6700, ext. 100 or shawn@nabh.org if you have questions and/or if we can assist CMS in addressing this important issue.

Sincerely,

Shawn Coughlin
President and CEO