



November 10, 2005

Dennis S. O'Leary, MD  
President  
Joint Commission on Accreditation of Healthcare Organizations  
One Renaissance Boulevard  
Oakbrook Terrace, IL 60181

Dear Dennis:

It is with the deepest concern that we – The American Hospital Association, the Association of American Medical Colleges, and the Federation of American Hospitals – write to you in your capacity as president of the JCAHO and as a member of the Board of Commissioners.

The JCAHO/JCR sale of individual hospital data analyses to 14 Blue Cross/Blue Shield plans, covering 29 states, paired with the JCAHO's announced short and long term strategies to become a "purveyor of performance data analysis for a variety of purposes" is a disturbing chain of events, particularly if the latter activity would include the collection of patient-level performance measurement information and the continued sale of data analyses to insurance companies and others.

Our organizations believe this shift in the JCAHO's strategic direction is not in the best interests of the patients, hospitals, government and public who look to the JCAHO as a trusted accreditor. The actions also will impede the development of a national public/private source of hospital performance data – available to all – that is now underway and that the Joint Commission publicly claims to support. We ask you to reconsider this change in direction and the actions it has spawned.

As advocates for approximately 5,000 hospitals, we have long supported the JCAHO's mission to improve the quality and safety of care in America's hospitals. In our view, this new direction severely undermines JCAHO's ability to effectively further that mission. The proposed expansion of JCAHO's activities raises serious legal and strategic policy issues. Among our concerns:

**Selling data analyses to third parties** undermines the degree of trust that accredited organizations can place in the JCAHO. We believe that there is a serious conflict of interest when an organization that accredits hospitals, and is virtually the sole source of accreditation is in a position to mandate collection of performance data that it simultaneously uses in analyses sold to insurers and others for its own financial benefit.

**Collection of patient-level performance data** raises serious questions about the strength of JCAHO's partnership with the Hospital Quality Alliance. The Alliance was founded in part to reduce the redundancy of data collection that burdens hospitals today. By constructing its own "data warehouse," the JCAHO undermines the credibility of the CMS data warehouse as a sole repository for reliable, consistent, and understandable patient-level hospital performance data. It also surely would encourage other organizations wanting patient level data to follow the Joint Commission's example. That would have the exact opposite effect we all want – coherent data collection.

**HIPAA compliance has not been adequately addressed.** The intent to seek patient level data from accredited hospitals and use it in ways unrelated to accreditation raises serious patient privacy problems that must be addressed promptly and forthrightly. For hospitals, these issues are of utmost importance because federal law and recent Justice Department interpretations about criminal prosecutions for HIPAA violations indicate that generally it is the hospital – and not its business associate – that is at risk for civil and criminal penalties if the use of patient information is out of compliance with HIPAA requirements. We support the AHA's recent efforts to seek guidance from the Department of Health and Human Services' Office of Civil Rights about:

- Whether JCAHO's interest in expanding its access to hospitals' patient-level data for its research and business activities is consistent with HIPAA's *minimum necessary* information requirements applicable to the business associate agreement for survey and accreditation;
- Whether the data JCAHO obtains in the course of its accreditation activities can be used for its own research and product development activities consistent with a hospital's HIPAA obligations without a data use agreement; and
- Whether, as part of its accreditation process, JCAHO can require hospitals to perform patient record analyses that are designed primarily to enhance JCAHO's commercial data products and still conform to hospitals' HIPAA obligations.

We request that the JCAHO Board of Commissioners reconsider proceeding with this data "strategy." "To move ahead with plans to become a "data purveyor" will, at a minimum, create a cloud of suspicion and mistrust of the JCAHO and, at worst, destroy existing relationships between the JCAHO and accredited hospitals.

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It is our hope that hospitals and the JCAHO can continue to build upon the positive actions that have already occurred, such as the recent standards revision, new survey process, and others that have proved so successful. To lose these positive gains due to a breach of confidence and trust in the JCAHO would be extremely regrettable.

Sincerely,

Jordan Cohen, M.D.  
President  
AAMC

Dick Davidson  
President  
AHA

Chip Kahn  
President  
FAH

Courtesy Copy:  
JCAHO Board of Commissioners