



American Hospital
Association

Quality Advisory

(Call 202-626-2973 if you do not receive all 18 pages of this advisory)

Amending Your 2006 JCAHO Accreditation Contract

August 4, 2005

Since the end of May, the American Hospital Association (AHA) and state hospital associations have been working with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to alleviate specific hospital concerns with the 2006 Accreditation Survey Contract and Business Associate Agreement Addendum. At the end of this process with JCAHO, we hope that all accredited hospitals will receive potential amending language to address specific contractual concerns raised by hospitals.

But despite JCAHO's general conclusion that the issues under discussion would not require them to offer any general contractual amendment to all hospitals, JCAHO has agreed to consider requests, submitted by individual accredited organizations, to amend certain provisions in the 2006 Accreditation Contract. The attached *Quality Advisory* describes the contractual modifications that JCAHO has agreed to accept and how hospitals, including those that already have signed and returned their 2006 Accreditation Contract, can incorporate appropriate amendments into their JCAHO agreements. JCAHO remains firm, however, that certain provisions of particular concern to some hospitals – indemnification, limitation of liability, and governing law – are not open for further negotiation or amendment. **The deadline for incorporating contractual amendments and executing a final signed agreement with JCAHO is October 1, 2005.** As indicated in the *Quality Advisory*, **every** hospital that wants to include any of the modifications in their contracts should *contact JCAHO directly* to do so.

To ensure that your hospital takes the necessary steps to evaluate and incorporate appropriate amendments into its 2006 JCAHO Accreditation Contract, check off the following items from your “to do” list:

- ✓ Share this *Quality Advisory* with your legal counsel and staff responsible for JCAHO activities.
- ✓ Work with your state hospital association to determine what modified language should be included in an amended contract.

- ✓ Contact JCAHO directly by October 1 to incorporate desired amendments into the 2006 Accreditation Contract.

The AHA, state hospital associations and JCAHO continue to discuss additional concerns about the JCAHO's access to and use of hospital information, including patient data. This may result in additional amendments to the 2006 Accreditation Contract and Business Associate Agreement Addendum. The AHA and your state hospital association will update you on further conversations and keep you informed of any recommended actions for hospitals.

If you have questions about the JCAHO contract amendment process or the ongoing discussions with JCAHO, please do not hesitate to contact Don Nielsen, MD, AHA senior vice president for quality, at (312) 422-2708 or Lawrence Hughes, regulatory counsel, at (202) 626-2346.

Sincerely,

Don Nielsen
AHA Senior Vice President, Quality

Lawrence Hughes
AHA Regulatory Counsel



American Hospital
Association

Quality Advisory

Amending Your 2006 JCAHO Accreditation Contract

Since the end of May, the American Hospital Association (AHA) and state hospital associations have been working with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to alleviate specific hospital concerns with the 2006 Accreditation Survey Contract and Business Associate Agreement Addendum. At the end of this process with JCAHO, we hope that all accredited hospitals will receive potential amending language to address specific contractual concerns raised by hospitals.

In general, JCAHO has concluded that none of the issues under discussion are of "national significance" and thus do not merit a general contractual amendment for all hospitals. JCAHO, however, has agreed to consider requests by individual accredited organizations to amend certain provisions in the 2006 Accreditation Contract, but the organization remains firm that the indemnification, limitation of liability, and governing law provisions – provisions that have been of particular concern to some hospitals – are not open for further negotiation or amendment.

Specific Modifications Accepted by JCAHO

The attached redlined version of the 2006 Accreditation Contract (Attachment 1) provided by the JCAHO and an additional attachment entitled *Section 5 (Confidential Information) of the Accreditation Contract - JCAHO Accepted State-Specific Suggestions to Address Peer Review Privilege/Protections* (Attachment 2) reflects the amended language that JCAHO has accepted thus far in response to requests from various individual hospitals, the AHA and state hospital associations. Certain further modifications to the 2006 Accreditation Contract that JCAHO will accept, at the request of the AHA and state hospital association counsel, address two areas.

First, *for all hospitals*, there is a general concern that complying with JCAHO standards may conflict with existing federal and state laws. JCAHO has incorporated language addressing this issue into *Section 2. (Joint Commission Standards)* of the attached redlined contract. The redlined contract reflects two approaches for addressing any conflict between JCAHO standards and existing laws, and JCAHO has agreed that hospitals can select either approach.

Second, *hospitals in certain states* are concerned about preserving the privileges and protections afforded to information and materials that are part of the hospital's peer review process when the information and materials are shared with JCAHO for accreditation purposes. Solutions for this issue are necessarily state-specific. The attached redlined contract includes a cautionary note to hospitals about the state-specific nature of modifications to this provision at the beginning of *Section 5. Confidential Information*. State-specific changes accepted by JCAHO to date are included in another attachment to this Advisory entitled *Section 5 (Confidential Information) of the Accreditation Contract - JCAHO Accepted State-Specific Suggestions to Address Peer Review Privilege/Protections*. The AHA continues to assist other state hospital associations, including Arkansas and South Carolina, in working with JCAHO to create an effective and acceptable solution to address the unique needs of their state's hospitals in protecting the peer review privilege.

JCAHO also has agreed to incorporate language into the Business Associate Agreement Addendum (Attachment 3) that explicitly references the "minimum necessary" requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). JCAHO is a business associate of hospitals, consistent with the HIPAA limitations, and may use and disclose only the minimum protected health information (PHI) necessary to accredit hospitals, since accreditation is the sole purpose for which hospitals have engaged the organization. The addition of minimum necessary related language to the Business Associate Agreement Addendum is meant to emphasize the importance of this HIPAA requirement for both hospitals and JCAHO. Modifications that have been accepted by JCAHO are included in the Business Associate Agreement Addendum attached to this *Advisory*. Again, the AHA and state association counsels continue to work with JCAHO on additional changes to the Business Associate Agreement Addendum to strengthen the HIPAA protections detailed there.

Process for Incorporating Contractual Changes

The AHA urges all hospitals, including those that already have signed and returned their 2006 Accreditation Contract to JCAHO, *to review with their legal counsel* whether any of the changes reflected in the attachments are appropriate and desirable to include in their individual accreditation contracts. Given the complexity of the amendment request process and the state-specific solutions necessary to address the peer review privilege problem posed by the language in the current contract, hospitals also will want to consult with their respective state hospital associations to understand and determine what modified language they should consider including in an amended contract.

Hospitals that wish to include any of the agreed to modifications in their contracts should *contact JCAHO directly* to do so. To amend their contracts, all hospitals, including those that already have executed signed agreements with JCAHO, whether previously amended or not, should submit their requests by fax directly to their JCAHO account representatives. The faxed request should indicate that the hospital has reviewed the agreed upon revisions and indicate the specific revisions requested. ***The deadline for incorporating contractual amendments and executing a signed agreement with JCAHO is October 1, 2005.***

Continuing Discussion with JCAHO

The AHA, state hospital associations, and JCAHO continue to discuss additional concerns about the JCAHO's access to and use of hospital information, including patient data. Our focus is to ensure that JCAHO's anticipated requests to hospitals for increased amounts of patient data as part of the 2006 accreditation process remain the *minimum necessary* for the *health care operations* purpose of accreditation, specifically as those terms are defined in the HIPAA medical privacy regulation and incorporated into the Business Associate Agreement Addendum to the 2006 Accreditation Contract. The goal is to include more data-specific, operational-level information related to these obligations into the 2006 Accreditation Contract. The JCAHO has not yet agreed to make any additional changes to the contractual language but rather has indicated some willingness to consider proposals from the AHA and the state hospital associations that would offer additional detail.

Our ongoing work with JCAHO also will address the appropriate scope of JCAHO's further use and disclosure of deidentified aggregate data from hospitals in its role as an accrediting organization for hospitals.

You'll hear from the AHA and state hospital associations about the progress of this ongoing conversation as well as any recommended actions for hospitals. If you have questions about the change request process or the ongoing discussions with JCAHO, please contact Don Nielsen, MD, senior vice president for quality, at (312) 422-2708 or Lawrence Hughes, regulatory counsel, at (202) 626-2346.

ACCREDITATION CONTRACT

THIS ACCREDITATION CONTRACT (“Accreditation Contract”), effective June 1, 2005, by and between [Name of Organization] (“the Organization”) and the Joint Commission on Accreditation of Healthcare Organizations (“the Joint Commission”), a nonprofit corporation classified as tax exempt under section 501 (c) (3) of the Internal Revenue Code.

WHEREAS, the Joint Commission’s mission is to continuously improve the safety and quality of care provided to the public through the provision of accreditation and related services that support performance improvement in health care organizations.

WHEREAS, the Organization wishes to purchase certain products and services related to the accreditation process to advance its own quality improvement initiatives and thereby improve the quality and safety of care provided.

NOW, THEREFORE, in consideration of the mutual promises in this Accreditation Contract and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree to the following terms and conditions:

SECTION 1. Scope of Services. The Joint Commission will develop and maintain state-of-the-art standards and National Patient Safety Goals that are appropriate to each type of health care organization accredited and will promulgate these standards and goals through its accreditation manuals, Frequently Asked Questions as posted on the Extranet, and *Perspectives*, a monthly newsletter provided to the Organization. The Joint Commission’s standards and goals will specify the requirements ~~necessary to help ensure~~ that promote high quality patient care is provided in a safe manner and in a secure environment. The Joint Commission will develop its standards and goals in consultation with health care experts, providers, practitioners, and researchers, as well as measurement experts, purchasers and consumers. The Joint Commission will publish any new standards requirements, policies and procedures and other requirements for accreditation, including those set out in the Joint Commission’s accreditation manuals and Perspectives at least six months in advance of their effective date, unless it determines that delaying the implementation of the standard could have an adverse effect on patient health or safety. The Joint Commission will provide the Organization with one complimentary copy of the Accreditation Manual for each of the Organization’s services seeking Joint Commission accreditation. The Joint Commission will staff on-site accreditation surveys with the appropriate number and type of surveyors as determined by the application of consistent scheduling rules that are based upon volume, site and service data submitted by the Organization. The surveyors will be employees of the Joint Commission who have field experience and have been formally trained, precepted, and certified as surveyors by the Joint Commission. The Joint Commission will provide ongoing education and supervision to its surveyors to ensure that the surveyors’ skills are appropriately maintained. ~~The Joint Commission shall take reasonable steps to provide that any surveyor selected to survey the Organization shall be free of professional or economic conflicts of interest as relates to the Organization.~~

The Joint Commission will assign the Organization an account representative who will serve as the primary point of contact with the Joint Commission. The account representative will assist the Organization in responding to Joint Commission inquiries, as well as provide support in

accessing and utilizing the Joint Commission's electronic Extranet-based services and communications.

The Joint Commission will provide the Organization with access to a team of knowledgeable health care professionals, known as the Standards Interpretation Group, to assist the Organization in understanding standards requirements. The Joint Commission also agrees to provide the Organization with various resources for organizational improvement, such as *Sentinel Event Alert*, continuous electronic access to the Periodic Performance Review (PPR) assessment product for each program for which the PPR is available, and a periodic review of the PPR and any required Plans of Action by the Standards Interpretation Group.

The Joint Commission will provide the Organization with a secure, as defined by the HIPAA security regulations, organization-specific Web site via the Extranet, which will serve as the electronic access point for all communications, survey reports, and performance improvement services used in the accreditation process. The Joint Commission will issue the Organization an initial password to access the site, as well as a security screen to enable the Organization to issue access to other individuals within the organization who are involved in the accreditation process.

The Joint Commission will provide the public and health care professionals with relevant and useful information about the quality and safety of Joint Commission accredited organizations in Quality Check[®], which is posted on the Joint Commission's website. If the Organization becomes accredited, the Joint Commission will allow the Organization to display the Joint Commission's Gold Seal of Approval[™] to publicize the Organization's achievement of accreditation.

The Joint Commission will develop and/or implement performance measures for accredited health care organizations in collaboration with other national entities in order to achieve consistency in measures and minimize data collection effort.

The Joint Commission will launch periodic Speak Up[™] patient safety campaigns, which are aimed at encouraging patients to become active and informed members of the health care team, and make relevant Speak Up[™] materials available to the Organization. The Joint Commission will also provide the Organization with program-specific newsletters, and periodic complimentary Web or audio programs on topics of mutual interest to health care organizations and the Joint Commission.

The Joint Commission will periodically conduct public policy initiatives by bringing together relevant health care experts, providers, practitioners, and other parties of interest to discuss critical issues affecting the quality and safety of health care and to aid in the identification of achievable solutions to these issues.

SECTION 2. ~~Adherence to~~ Joint Commission Standards, Policies, Procedures, Eligibility Requirements, Participation Requirements, and National Patient Safety Goals. The Organization agrees, if accredited, that it is responsible for knowledge of the information, including new and revised standards, policies, procedures, eligibility requirements, accreditation participation requirements, and national patient safety goals provided in *Perspectives*, or in Joint Commission accreditation manuals as periodically revised, that are relevant to its programs. The Organization further agrees that ~~it will be bound by~~ accreditation requires compliance with any

such new or revised standards, policies, procedures, eligibility requirements, accreditation participation requirements, or national patient safety goals, except where such policies, procedures, and other requirements for accreditation cannot be complied with without violating federal, state or other law, in which case the applicable federal, state or other law shall prevail, and will take any steps needed to come into compliance with them in a reasonable period of time, and understands that failure to do so can result in loss of accreditation provided, however, that where such compliance violates federal or state law, such federal or state law prevails and the Organization will maintain compliance with such law. [NOTE: The addition beginning with “except where” and ending with “other law shall prevail” and the addition beginning with “provided, however, that such compliance violates” and ending with “maintain compliance with such law” are alternative ways that JCAHO has accepted to address hospitals’ concerns about compliance with JCAHO standards that are in conflict with existing law. Hospitals electing to incorporate a change to address this concern can choose between the two alternatives.]

The Organization agrees to use its best efforts to adhere ~~at all times~~ to ~~the all~~ policies and procedures and other requirements for accreditation of the Joint Commission, including those set out in the Joint Commission’s accreditation manuals and *Perspectives*. Such policies and procedures and other requirements specifically include those set out in the following sections of Joint Commission accreditation manuals: Accreditation Policies and Procedures, Accreditation Participation Requirements, Sentinel Events and National Patient Safety Goals.

The Organization agrees to ~~engage in good faith and frank participation~~ participate in the accreditation process in good faith and never knowingly provide any falsified information or knowingly fail to provide relevant information that may be used by the Joint Commission to determine the Organization’s compliance with Joint Commission requirements. In this regard, the Organization will furnish any reasonable certifications required about the information it supplies to the Joint Commission.

SECTION 3. Submission/Release of Information. The Organization agrees to provide information requested by the Joint Commission that is relevant to the accreditation process (including for example, all official records and reports of public licensing, examining, reviewing or planning bodies), and grants permission to the state licensing authority, federal agencies, and any other relevant authorized government examining or review agency, to release to the Joint Commission any information relevant to the accreditation process concerning the Organization and any related entities included in the Organization’s accreditation process. If the Organization intends to request any surveyor to sign a confidentiality agreement at the time of survey, the Organization must submit such agreement to the Joint Commission with submission of its E-Update/Application for Accreditation.

The Organization agrees that it is responsible for obtaining any necessary authorizations to permit Joint Commission access to confidential health record information, if allowed by applicable law and regulation. The Organization’s failure to secure such authorizations, despite reasonable efforts to do so, shall not be a breach of this Agreement and shall not adversely affect the Organization’s accreditation status.

The Organization agrees to sign a HIPAA required Business Associate Agreement with the submission of its E-Update/Application for Accreditation.

SECTION 4. Acceptance of a Survey. The Joint Commission schedules surveys based on information provided in the Organization's Application for Accreditation and/or E- Updates. Using the information provided, the Joint Commission determines the Organization's services, programs, and related entities that are included in the scope of the survey, the number of days required for a survey and the composition of the survey team. Inaccurate or incomplete information in the Application for Accreditation and/or E-Update may necessitate an additional survey, which may delay the Joint Commission's survey report and accreditation decision. The Organization may also incur additional survey charges in such circumstances.

Beginning in 2006, most Joint Commission accreditation surveys will be unannounced. The Organization's failure to permit an unannounced survey is grounds for denial of accreditation.

SECTION 5. [Caution: Amendments for this section to address problems that hospitals may have in preserving the privileges and protections afforded to peer review information and materials that are shared with JCAHO for accreditation purposes are state specific.

Examples of the state-specific suggested amendments that JCAHO has agreed to accept to date are found in the additional attachment to the AHA Quality Advisory. In considering and incorporating amendments to this section, hospitals are urged to consult with their respective state hospital associations.] Confidential Information. The Organization and the

Joint Commission acknowledge and agree that it is their intent to work together in the accreditation process as part of a peer review, self-evaluation, and medical study designed to improve the quality and safety of health care. The confidentiality of documents utilized in the accreditation process must be maintained in order to preserve the integrity of the accreditation process and the protections afforded such peer review, self-evaluation, and medical studies. In working with the Organization in the accreditation process, the Joint Commission is an agent of the quality/peer review/medical/professional review committees of the Organization and serves as a joint committee of the Organization. All accreditation activities shall be conducted in accordance with all applicable privileges of confidentiality and immunity under state and federal law, and these activities are not intended to waive, jeopardize or eliminate these privileges.

Accordingly, subject to the limitations described below, the Joint Commission confirms that it and each Joint Commission surveyor keeps confidential and will not release to any third party the following information received or developed during the accreditation process ("Confidential Information"), unless its release is required by a government agency (see Data Release to Government Agencies section in the Public Information Policy):

- The Official Accreditation Report unless its release is required by a government agency.
- Information learned or obtained from the Organization that is used to determine compliance with specific accreditation standards.
- The Organization's root cause analysis and related action plan prepared in response to a sentinel event or in response to other circumstances specified by the Joint Commission.
- The algorithms used in the Priority Focus Process.
- The Priority Focus Process information used in the Organization's survey.
- The Organization's Periodic Performance Review results and related action plan and measures of success.
- All other materials that may contribute to the accreditation decision.

The Joint Commission will not disclose Confidential Information except as expressly provided

herein and under the terms of the policies of the Joint Commission from time to time in effect, and in accordance with federal and state law and regulation, including those set out in the Joint Commission's Public Information Policy and other portions of Joint Commission accreditation manuals or *Perspectives*. The Organization acknowledges that the Joint Commission may disclose Confidential Information when required by law or court order. The Joint Commission will provide notice to the Organization and an opportunity to object to the production of any Confidential information prior to providing such information that may be required by law or court order unless the Joint Commission is prohibited by an authorized governmental authority from notifying the Organization.

Notwithstanding any contemplated or actual disclosure of Confidential Information as described herein, the Organization and the Joint Commission acknowledge and agree that it is their intention that any privilege applicable to such Confidential Information will not be waived by such disclosure or other circumstance.

SECTION 6. Publicly Available Information. The Organization agrees in furtherance of the Joint Commission's commitment to make relevant and accurate information about surveyed health care organizations available to interested parties, as described in the Joint Commission's Public Information Policy (see Accreditation Policies and Procedures section of the accreditation manuals), to permit the Joint Commission to publish/release Quality Reports on individual accredited Organizations as well as aggregate performance data about the Organization; to make available to federal, state, local or other government certification or licensing agencies specific accreditation-related information; and to publicly disclose certain information in response to requests: only in accordance with the Public Information Policy.

The Organization acknowledges that, in accordance with the Public Information Policy, the Joint Commission releases certain information on organization-specific standards compliance and the reason(s) for adverse accreditation decisions.

SECTION 7. Prohibition on the Use of Surveyors as Consultants. The Organization agrees that it will adhere to the Joint Commission's prohibition on the use of its surveyors as consultants. The Organization specifically acknowledges that it is not permitted to use Joint Commission full-time, part-time, or intermittent surveyors to provide any accreditation-related consulting services. Examples of such services include helping an organization to meet Joint Commission standards, helping an organization to complete its Periodic Performance Review, helping an organization to remedy areas of performance identified in its Periodic Performance Review as needing improvement, conducting mock surveys for an organization, and providing consultation to an organization to address Priority Focus Process information.

SECTION 8. Accreditation Certificate Display and Use. The Joint Commission provides the Organization with one certificate of accreditation for each organization, service, or related entity included in the scope of the survey and accreditation process. Additional copies may be purchased. The certificate and all copies remain the Joint Commission's property. They must be returned if the Organization is issued a new certificate reflecting a name change, or if the Organization's accreditation status is changed, withdrawn, or denied for any reason. The Organization will reimburse the Joint Commission for any reasonable costs the Joint Commission incurs in recovering its certificate if the Organization does not promptly and voluntarily return any certificate in accordance with this paragraph.

The Organization agrees not to ~~suggest~~ **represent** that it has the status of an accredited organization unless such representation is accurate, and further agrees, if it is accredited, not to misrepresent the nature of that accreditation. A single accreditation award applies to all of the services, programs and related entities included in the scope of the Organization's survey and accreditation process.

SECTION 9. Review and Appeal Procedures. Following any Preliminary Denial of Accreditation decision, the Organization has the right to a review and appeal of that decision before it becomes the final decision of the Joint Commission. (See Accreditation Policies and Procedures section of the accreditation manuals.)

SECTION 10. Fees. * The Joint Commission determines fees annually and bases those fees on the need to secure sufficient resources to cover the costs of its operations. The Joint Commission generally bases individual organization fees on the volume and type of services provided and the sites to be included in the organization's accreditation survey process. Beginning in 2006, the Joint Commission's fee structure will include an annual fee, which recognizes the provision of substantial accreditation-related services on a more continuous basis between on-site surveys, and a separate fee to cover the costs of actual on-site surveys when these occur. The Joint Commission levies separate charges for add-on services such as specialist surveyors. These are invoiced after the survey is completed. Each year, on or before December 1, the Joint Commission will post on its extranet site the applicable fees for the following calendar year for the various categories of organizations that it surveys. Fees charged to the Organization pursuant to this Accreditation Contract shall be limited to those posted on the Joint Commission extranet site for the category applicable to the Organization.

Annual fees are non-refundable, are billed as of January 1st of each year, and are due upon receipt. On-site survey fees are billed upon completion of the survey and are due upon receipt.

Failure to provide timely payment of either annual fees or on-site survey fees can result in loss of accreditation.

*This process does not apply to fees that are funded directly by a government agency, such as the Center for Substance Abuse Treatment (CSAT) for opioid treatment centers and the Bureau of Primary Health Care (BPHC) for community health centers.

SECTION 11. Indemnification. The Organization agrees that Joint Commission accreditation does not constitute a warranty of compliance with the accreditation standards and further that accreditation is not a substitute for self-monitoring and assessment of the services and the quality and safety of care provided by the Organization. The Organization agrees to indemnify and hold harmless the Joint Commission, its commissioners, officers, agents, employees, and member organizations from any and all professional liability claims of other parties against the Joint Commission, its commissioners, officers, agents, employees, or member organizations arising from this Accreditation Contract, including all judgments, settlements, costs, expenses, and reasonable attorneys' fees, unless and until any such judgments, settlements, costs, expenses and attorneys' fees are found by a final judgment of a court of competent jurisdiction to have resulted solely from negligence or wrongdoing on the part of the Joint Commission. This indemnification and hold harmless provision shall apply only to professional liability claims, i.e., claims based on the Joint Commission's performance of its professional services, and not to general liability

claims for bodily injury or property damage arising out of the Joint Commission's negligence or intentional misconduct.

SECTION 12. Limitation of Liability. The Organization agrees that in the event of any error or omission in connection with or as a result of the Joint Commission's performance of accreditation services including, but not limited to, the scheduling and conduct of any accreditation survey, the processing of the results of any accreditation survey, and the disclosure of any accreditation survey results, the Joint Commission's liability to the Organization for any loss or damage arising therefrom, shall be limited to the total fees paid or payable for any accreditation services provided hereunder. This limitation of liability shall apply to the fullest extent permitted by law regardless of whether the Organization's claim for loss or damage is based upon contract, tort, strict liability, or otherwise, and shall constitute the Joint Commission's sole liability to the Organization and the Organization's exclusive remedy against the Joint Commission in the event of any such error or omission.

SECTION 123. Notices. Any notice required by this Accreditation Contract to be given to the Organization shall be addressed to the Organization at its post office address as shown in Joint Commission records and shall be sent to the Organization by certified mail or by a recognized package delivery service. Any notice required to be given to the Joint Commission by the Organization shall be sent by the Organization in the same manner and shall be addressed to the Organization's account representative, Joint Commission on Accreditation of Healthcare Organizations, One Renaissance Boulevard, Oakbrook Terrace, IL 60181.

SECTION 134. Governing Laws. This Accreditation Contract shall be governed by the laws of the State of Illinois, without regard to conflict of laws principles. If any provision is found to be unenforceable, it shall be stricken or rewritten to cause this Accreditation Contract to become enforceable to the greatest extent possible. The Organization agrees that any claim for loss or damage arising from the performance of accreditation services, whether such claim is based upon contract, tort, strict liability, or otherwise, shall be filed and litigated in the Circuit Court of DuPage County or Cook County, Illinois or the United States District Court for the Northern District of Illinois, and the Organization consents and submits to the personal jurisdiction of such courts. The Organization waives any right it may have to transfer or change the venue of any litigation brought hereunder.

SECTION 145. Entire Agreement. This is the entire Accreditation Contract between the parties and supersedes any other agreement or oral understanding the parties may have had prior to the effective date of this Accreditation Contract. Any E-Update or Application for Accreditation that includes Terms of Agreement that is submitted after the effective date of this Accreditation Contract shall be null and void.

By signing this Accreditation Contract, the parties have caused the Contract to be duly executed as of the date first above written.

SECTION 156. Term and Termination. The term of this Accreditation Contract is for a period of one (1) year beginning on the effective date, to be renewed automatically for continuous new one (1) year terms, unless either party notifies the other of its intent not to renew ninety (90) days prior to the annual renewal date. ~~The Joint Commission~~ Either party may terminate this Accreditation Contract if it determines that the ~~Organization~~ other party has

breached a material term of the Accreditation Contract. Notwithstanding the foregoing the Organization may terminate this Accreditation Contract at any time upon ninety (90) days' notice to the Joint Commission.

SECTION 167. No Third Party Beneficiaries. Nothing express or implied in this Accreditation Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties any rights, remedies, obligations or liabilities whatsoever.

SECTION 178. Survival. Provisions that involve the following topics shall survive the termination of this accreditation contract: Confidential Information, Publicly Available Information, Award Display & Use, Fees (to the extent due but not paid), Indemnification and Limitation of Liability, Notices, and Governing Laws.

Joint Commission on Accreditation of
Healthcare Organizations

Organization Name

By: _____
Name:
Title:

By: _____
Name: Dennis S. O'Leary
Title: President

**Modifications to Section 5 (Confidential Information) of the Accreditation Contract
JCAHO Accepted State-Specific Suggestions to Address Peer Review Privilege/Protections**

For California Hospitals – California’s peer review protection is a “protection” and is therefore legally different than a “privilege.” Accordingly, California hospitals are advised to substitute or supplement the phrase “peer review privileges” where it appears in the redlined version of the accreditation contract.

Add the words “immunities, [and] [or] protections” wherever the peer review privilege is referred to in Section 5 of the redlined contract.

For Kansas Hospitals – The state’s peer review statute does not allow JCAHO to be designated as part of the peer review process as the language in the redlined version of the 2006 Accreditation Contract would do. The substitute language below requires JCAHO to use reasonable means to protect and maintain the privilege afforded to peer review information and materials.

SECTION 5. Confidential Information. The Organization and the Joint Commission acknowledge and agree that it is their intent to work together in the accreditation process as part of a peer review, self-evaluation, and medical study designed to improve the quality and safety of health care. The confidentiality of documents utilized in the accreditation process must be maintained in order to preserve the integrity of the accreditation process and the protections afforded such peer review, self-evaluation, and medical studies. All accreditation activities shall be conducted in accordance with all applicable privileges of confidentiality and immunity under state and federal law, and these activities are not intended to waive, jeopardize or eliminate these privileges. Any information provided to JCAHO and/or its surveyors by the Organization that is subject to any statutory, regulatory, or case law/common law privilege shall not be deemed waived by the Organization and that JCAHO shall use all reasonable means to protect and maintain any such privilege.

[Remainder of Section 5 as included in the redlined contract]

For New York and Connecticut Hospitals – The substitute language would state that JCAHO is acting as an agent of the hospital and its quality or peer review committee when JCAHO is working with the organization in the accreditation process. In acting as an agent of the hospital for this purpose, JCAHO would be subject to all the same laws that are applicable to the hospital regarding its obligations to maintain the confidentiality of peer review information and materials.

SECTION 5. Confidential Information. The Organization and the Joint Commission acknowledge and agree that it is their intent to work together in the accreditation process as part of a peer review, self-evaluation, and medical study designed to improve the quality and safety of health care. The confidentiality of documents utilized in the accreditation process must be maintained in order to preserve the integrity of the accreditation process and the protections afforded such peer review, self-evaluation, and medical studies. In working with the Organization in the accreditation process, the Joint Commission is acting as an agent of the Organization and its quality/peer review/medical/professional and other review committees. In its capacity as an agent of the Organization, for these purposes, the Joint Commission shall adhere to all laws

applicable, if any, to the Organization concerning the obligation to maintain the confidentiality of all information collected during a quality/peer review/medical/professional review committee activity. All accreditation activities shall be conducted in accordance with all applicable privileges of confidentiality and immunity under state and federal law, and these activities are not intended to waive, jeopardize or eliminate the application of these privileges to the Organization, the information collected or to the Joint Commission as an agent of the Organization.

[Remainder of Section 5 as included in the redlined contract]

For Virginia Hospitals – The substitute language would characterize JCAHO as a “consultant to” a hospital peer review or quality committee rather than an agent of the committee and require that JCAHO accredit through the QI committee.

SECTION 5. Confidential Information. The Organization and the Joint Commission acknowledge and agree that it is their intent to work together in the accreditation process as part of a peer review, self-evaluation, and medical study designed to improve the quality and safety of health care. The confidentiality of documents utilized in the accreditation process must be maintained in order to preserve the integrity of the accreditation process and the protections afforded such peer review, self-evaluation, and medical studies under state and federal law. In working with the Organization in the accreditation process, the Joint Commission shall act as a consultant to a quality/peer review/medical/professional or review committee [described in Section 8.01-581.16 of the Virginia Code] (the “Organization Committee”). In its capacity as a consultant to the Organization Committee, for these purposes, the Joint Commission shall adhere to all laws applicable, if any, to the Organization concerning the obligation to maintain the confidentiality of all information collected during a quality/peer review/ medical/ professional review committee activity. All accreditation activities shall flow through the Organization Committee and be conducted in accordance with all applicable privileges of confidentiality and immunity under state and federal law, and these activities are not intended to waive, jeopardize or eliminate the application of these privileges to the Organization, the information collected or to the Joint Commission as a consultant to the Organization committee.

[Remainder of Section 5 as included in the redlined contract]

ADDENDUM TO JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE
ORGANIZATIONS ACCREDITATION CONTRACT
(Business Associate Agreement)

THIS ADDENDUM supplements and is made a part of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") Accreditation Contract (hereinafter, the "Underlying Agreement") submitted to JCAHO by _____ ("the Organization"). The Underlying Agreement, when accepted by JCAHO, establishes the terms of the relationship between JCAHO and the Organization.

Whereas, JCAHO and the Organization are parties to the Underlying Agreement pursuant to which JCAHO ~~provides certain accreditation and related services to~~ accredits the Organization and, in connection with the provision of ~~those~~ accreditation services, the Organization discloses to JCAHO certain Protected Health Information ("PHI", as defined in 45 C.F.R. §164.501) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

Whereas, the Organization is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, JCAHO, as a recipient of PHI from the Organization, is a "Business Associate" as that term is defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Addendum is to comply with the requirements of the Privacy Rule and the Security Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§164.314(a), 164.502(e), §164.504(e), and as may be amended.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms have the same meanings as set forth in the Privacy Rule or the Security Rule.
2. Scope of Use and Disclosure by JCAHO of Protected Health Information
 - a. JCAHO shall be permitted to Use and Disclose PHI that is, consistent with the Minimum Necessary policies and procedures of the Organization, disclosed to it by the Organization as necessary to perform its obligations under the Underlying Agreement.
 - b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, JCAHO may:
 - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of JCAHO;

- ii. Disclose the PHI in its possession to a third party for the purpose of JCAHO's proper management and administration or to fulfill any legal responsibilities of JCAHO; provided, however, that the Disclosures are Required by Law or JCAHO has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify JCAHO of any instances of which it becomes aware in which the confidentiality of the information has been breached;
- iii. Aggregate the PHI with that of other Organizations for the purpose of providing the Organization with data analyses relating to the Health Care Operations of the Organization. JCAHO may not Disclose the PHI of one Organization to another Organization without the written authorization of the Organizations involved; and
- iv. De-identify any and all PHI created or received by JCAHO under this Addendum; provided, that the de-identification conforms to the requirements of the Privacy Rule.

3. Obligations of JCAHO. In connection with its Use and Disclosure of PHI, JCAHO agrees that it will:

- a. Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law.
- b. Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.
- c. To the extent practicable, mitigate any harmful effect that is known to JCAHO of a Use or Disclosure of PHI by JCAHO in violation of this Addendum.
- d. Report to the Organization any Use or Disclosure of PHI not provided for by this Addendum of which JCAHO becomes aware.
- e. Require contractors or agents to whom JCAHO provides PHI to agree to the same restrictions and conditions that apply to JCAHO pursuant to this Addendum.
- f. Make available to the Secretary of Health and Human Services JCAHO's internal practices, books and records relating to the Use and Disclosure of PHI for purposes of determining the Organization's compliance with the Privacy Rule, subject to any applicable legal privileges.
- g. Within (15) days of receiving a request from the Organization, make available the information necessary for the Organization to make an accounting of Disclosures of PHI about an individual.
- h. Within ten (10) days of receiving a written request from the Organization, make available PHI necessary for the Organization to respond to Individuals' requests for access to PHI about them in the event that the PHI in JCAHO's possession constitutes a Designated Record Set.
- i. Within fifteen (15) days of receiving a written request from the Organization incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in JCAHO's possession constitutes a Designated Record Set.
- j. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Organization, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Organization's compliance with the Security Rule;
- k. Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect that Electronic PHI; and
- l. Promptly report to the Organization any Security Incident with respect to Electronic PHI of which it becomes aware.

4. Obligations of the Organization. The Organization agrees that it:

- a. Has included, and will include, in the Organization’s Notice of Privacy Practices required by the Privacy Rule that the Organization may Disclose PHI for Health Care Operations purposes.
- b. Has obtained, and will obtain, from Individuals’ consents, authorizations and other permissions necessary or Required by Laws applicable to the Organization for JCAHO and the Organization to fulfill their obligations under the Underlying Agreement and this Addendum.
- c. Will promptly notify JCAHO in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Organization has agreed to that may affect JCAHO’s ability to perform its obligations under the Underlying Agreement or this Addendum.
- d. Will promptly notify JCAHO in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect JCAHO's ability to perform its obligations under the Underlying Agreement or this Addendum.

5. Termination.

- a. Termination for Breach. The Organization may terminate this Addendum if the Organization determines that JCAHO has breached a material term of this Addendum. Alternatively, the Organization may choose to provide JCAHO with notice of the existence of an alleged material breach and afford JCAHO an opportunity to cure the alleged material breach. In the event JCAHO fails to cure the breach to the satisfaction of the Organization, the Organization may immediately thereafter terminate this Addendum.
- b. Automatic Termination. This Addendum will automatically terminate upon the termination of the Underlying Agreement.
- c. Effect of Termination.
 - i. Termination of this Addendum will result in termination of the Underlying Agreement.
 - ii. Upon termination of this Addendum or the Underlying Agreement, JCAHO will return or destroy all PHI received from the Organization or created or received by JCAHO on behalf of the Organization that JCAHO still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, JCAHO will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. Amendment. JCAHO and the Organization agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Organization to comply with the requirements of the Privacy Rule and the Security Rule.

7. Survival. The obligations of JCAHO under section 5.c (ii) of this Addendum shall survive any termination of this Addendum.

8. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

9. Effective Date. This Addendum shall be effective on _____

Surveyed Organization	JCAHO
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____