



American Hospital
Association

Quality Advisory

(Call 202-626-2973 if you do not receive all six (6) pages of this advisory)

Update on the 2006 JCAHO Accreditation Contract: New Deadline, New Electronic Amendment Process

September 30, 2005

On August 4, the American Hospital Association (AHA) sent hospitals the *Quality Advisory* “Amending Your 2006 JCAHO Accreditation Contract.” Since then, the AHA and state hospital associations have continued to work with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) on the 2006 Accreditation Contract. Recently, JCAHO changed the deadline and process for hospitals to make amendments to their 2006 Accreditation Contracts as described in that August AHA *Quality Advisory*. The attached *Quality Advisory* discusses the new contract deadline and amendment process.

JCAHO has set *October 31 as the revised deadline* for hospitals to amend and execute a *final* 2006 Accreditation Contract. But, as detailed in the attached *Advisory*, hospitals wishing to execute an amended contract, including those that already followed the directions in the AHA’s August *Quality Advisory* and faxed to their respective JCAHO account representative a hard copy request for any contract revisions, now *will have to use their organization’s JCAHO Extranet Web site* to accept electronically an amended 2006 Accreditation Contract. Hospitals that wish to make one of any of the special types of amendment requests that are described in the attached *Quality Advisory* will need to take some additional steps to execute an amended contract. **Hospitals should no longer fax any requests for amending their 2006 accreditation contract to their respective account representatives, even though the AHA’s August *Quality Advisory* instructed them to do.**

JCAHO’s recent decision to extend the deadline allows hospitals additional time to consider amendments and request that appropriate amendments be included in their accreditation agreements. In this *Quality Advisory*, the AHA advises hospitals to consult with their legal counsel about the appropriate contractual relationship for their individual organization and whether they should amend their JCAHO contract.

To ensure that your hospital responds appropriately to JCAHO’s new deadline and amendment process, check off the following items from your “to do” list:

- ✓ Share this updated *Quality Advisory* with your legal counsel and staff responsible for JCAHO activities.
- ✓ Ensure that your hospital carefully reviews and evaluates the amended accreditation contract on the organization's JCAHO Extranet Web site.
- ✓ Determine whether you will need to use your organization's JCAHO Extranet Web site and/or fax a special request to JCAHO's Office of Legal Affairs to enter into an amended accreditation contract.

The AHA and state hospital associations continue discussions with JCAHO about additional amendments, particularly to the Business Associate Agreement Addendum to the 2006 Accreditation Contract, which we believe would ensure compliance with HIPAA regulations and would also limit JCAHO's access to, use of, and further disclosure of hospital information, including patient data. The associations have stressed to JCAHO that it is critical we reach a joint agreement on all outstanding contractual issues in a timely manner. This will ensure that appropriate additional amendments are offered to hospitals prior to JCAHO's new October 31 deadline for executing *final* accreditation agreements. Accredited organizations will need sufficient time before that deadline to consider any additional agreed-to amendments and request that they be incorporated appropriately into their *final* JCAHO 2006 accreditation contracts.

JCAHO has not yet agreed to make any additional amendments, but continues to demonstrate a willingness to consider proposals from the AHA and the state hospital associations. We're eager to move ahead quickly with the effort to reach timely agreement on all outstanding contractual issues. With the goal of moving the process along, the AHA soon will send to JCAHO additional recommended revisions to the contract language. The AHA and your state hospital association will update you as discussions with JCAHO about these recommendations progress.

Questions about the new contract deadline and amendment process as well as the ongoing discussions about additional amendments to the contract should be directed to either Don Nielsen, MD, AHA senior vice president for quality, at (312) 422-2708 or by e-mail at dnielsen@aha.org, or Lawrence Hughes, regulatory counsel and director, member relations, at (202) 626-2346 or by e-mail at lhughes@aha.org.

Sincerely,

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Update on the 2006 JCAHO Accreditation Contract: New Deadline New Electronic Amendment Process

On August 4, the American Hospital Association (AHA) sent hospitals the *Quality Advisory* “Amending Your 2006 JCAHO Accreditation Contract.” Since then, the AHA and state hospital associations have continued to work with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) on the 2006 Accreditation Contract. Recently, JCAHO extended to October 31 the deadline for hospitals to amend and execute a *final* 2006 Accreditation Contract. In addition, JCAHO has requested that hospitals stop faxing requests for amendments to their respective account representatives and begin submitting such requests electronically through their JCAHO Extranet Web site.

This *Quality Advisory* discusses JCAHO’s new directions for amending hospitals’ 2006 Accreditation Contracts, and provides an update on the continuing discussions between the AHA, state hospital associations and JCAHO regarding potential additional amendments to the Business Associate Agreement Addendum to the 2006 Accreditation Contract. In this *Quality Advisory*, the AHA expresses no opinion about whether individual hospitals should enter into an amended contract with JCAHO. Hospitals should consult with their own legal counsel about the appropriate contractual relationship for their individual organization.

JCAHO Extends Contracting Deadline

JCAHO’s new contracting deadline of October 31 allows additional time for hospitals to consider amendments and execute a *final* agreement with JCAHO. As reported in the August 4 AHA *Quality Advisory*, JCAHO previously established October 1, 2005 as the deadline. As outlined below, hospitals may need to access their JCAHO Extranet Web site before November 1, 2005 to complete this amendment and contracting process.

JCAHO Establishes Electronic Process for Amending Contracts

JCAHO also will require that hospitals wishing to accept an amended 2006 Accreditation Contract use their JCAHO Extranet Web site to do so. Hospitals *should no longer fax requests* for amending their 2006 accreditation contract to their respective account representatives as they were directed to do in the AHA's August *Quality Advisory*. The AHA repeatedly expressed concerns to JCAHO that its original requirement that all hospitals fax individual requests for amendments to their respective JCAHO account representatives would overwhelm the system and create significant confusion for both JCAHO and accredited hospitals. We believe that JCAHO's decision to establish an electronic means for hospitals to execute an amended accreditation contract may reduce the complexity and confusion of the contracting process.

Hospitals that already have accepted electronically the contractual language that JCAHO originally offered and do not wish to make any additional revisions to their 2006 Accreditation Contract *do not* need to take any additional action. Additionally, hospitals do not need to take additional action if they do not wish to make any additional revisions to their JCAHO accreditation contracts, beyond the variation already approved by JCAHO at the hospital's individual request, submitted directly to Eleanor Wagner, JCAHO's director, legal affairs.

In line with JCAHO's new directions, however, all hospitals that have not yet accepted any contract as well as every hospital that, following the directive in AHA's August *Quality Advisory*, already has faxed to their respective JCAHO account representative a hard copy request for any revisions that have been accepted by the Joint Commission now must use their JCAHO Extranet Web site (www.jcaho.org) to accept electronically an amended 2006 Accreditation Contract. In addition, JCAHO will permit hospitals that already electronically accepted the contract language JCAHO originally offered to access the Extranet Web site and choose, as appropriate, an amended version of the 2006 Accreditation Contract. JCAHO will accept the most recently executed version of the contract as the hospital's applicable accreditation contract, superseding any previously selected version of the agreement.

JCAHO currently is working to make available soon on the Extranet Web site contract language that is based on discussions with the AHA and state hospital associations. As a result of these discussions, JCAHO's Extranet Web site will include multiple versions of the revised 2006 Accreditation Contract. These multiple versions largely reflect state-specific revisions to Section 5 (Confidential Information) of the contract. The revisions are required to address unique concerns for hospitals in certain states related to 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. JCAHO's Extranet Web site will include a specific amended version of the contract for hospitals in the following states: California, Kansas, New York and Connecticut (hospitals in NY and CT can use the same revision), Pennsylvania, Virginia, and Wisconsin.

The AHA and representatives of the state hospital associations in Arkansas, Massachusetts, New Hampshire, and South Carolina continue to work with JCAHO to develop an appropriate revision of Section 5 for hospitals located in these states. We anticipate reaching an agreement about the revision shortly. At that point, a single amended version of the contract that can be used by hospitals in these states will be added to JCAHO's Extranet Web site.

Additionally, JCAHO has indicated that additional state-specific versions of the contract may be made available on the Extranet Web site as JCAHO agrees to accept requests for revisions directly from other state hospital associations. Hospitals outside these 11 states should check with their respective state hospital associations to determine whether any state-specific contractual revisions have been submitted to and approved by JCAHO, and whether there are any recommended actions for hospitals.

For most states, however, no additional special revisions of Section 5 likely will be needed to address concerns related to peer review privilege, and most hospitals will not need to select one of the state-specific amended versions of the contract. Rather, hospitals in most states will be able to select the same general version of the amended contract. This more general version of the amended contract is what the AHA shared with hospitals as *Attachment 1* in the August *Quality Advisory*.

To ensure that the appropriate amended version of the 2006 Accreditation Contract is selected from the JCAHO's Extranet Web site, every hospital should exercise care when using their JCAHO Extranet Web site. The AHA has asked that JCAHO ensure that the various amended versions of the contract are displayed on its Extranet Web site with proper labels and clear instructions to hospitals, and eliminate any uncertainty about which version of the amended contract a hospital in any specific state should select for execution.

The versions of the amended contract that JCAHO will make available on its Extranet Web site will be completely integrated documents containing all of the amendments agreed upon to date. JCAHO anticipates that most hospitals wishing to amend their 2006 Accreditation Contracts will want to accept, as appropriate, one of these fully integrated documents. We understand, however, that JCAHO will not require hospitals to accept all of the revisions. Instead JCAHO will permit any hospital to include as part of its individual JCAHO contract *only those specific* agreed-to revisions that *the hospital determines are appropriate* for inclusion. JCAHO is directing any hospitals that choose to include only selected agreed-to revisions in their contracts to fax their specific requests to the JCAHO Office of Legal Affairs. Hospitals should refer to the AHA's August 4 *Quality Advisory* to assist in identifying the specific revisions that are included in the integrated documents found on the JCAHO's Extranet Web site. Hospitals *wishing to incorporate only selected agreed-to amendments* in their accreditation contract should take the following steps to execute a *final* contract:

- Access the JCAHO Extranet Web site
- Print off two (2) copies of the appropriate version of the fully integrated contract
- On both copies, clearly highlight the specific agreed-to revisions the hospital wishes to accept and strike through those the hospital rejects
- Sign both copies, as appropriately altered, and fax them to the attention of Eleanor Wagner, director, legal affairs, at (630) 792-4670 (FAX)

JCAHO legal counsel will ensure that the documents are signed by the proper JCAHO party and return one of the signed copies to the hospital for its files.

Finally, while JCAHO expects to receive few requests from individual organizations for additional amendments beyond those in the electronic versions of the 2006 contract added to its Extranet Web site, it still will consider all additional individual requests, and asks that these

requests be faxed to JCAHO's Office of Legal Affairs. 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. Hospitals seeking further revisions to the JCAHO accreditation contract beyond those already included in the integrated documents found on the Extranet Web site will need to follow a process similar to that outlined in the previous paragraph. Specifically, hospitals wishing to obtain JCAHO's agreement to the proposed amendments should:

- Access the JCAHO Extranet Web site
- Print off two (2) copies of the appropriate version of the contract
- Make requested revisions to both copies of the printed contract
- Sign and fax both copies, as appropriately altered, to the attention of Ms. Eleanor Wagner, director, legal affairs, at (630) 792-4670 (FAX)

JCAHO legal counsel will evaluate the requested revisions and contact the hospital about JCAHO's decision to accept the request. Hospitals should include with their request specific contact name and telephone number so that JCAHO legal counsel can follow up, though also can follow up by directly contacting Eleanor Wagner at (630) 792-5670 (direct voice line).

Discussions about Additional Amendments Continue

The AHA and state hospital associations continue to discuss additional amendments with JCAHO, particularly those to the Business Associate Agreement Addendum to the 2006 Accreditation Contract. The AHA and state associations believe these amendments would ensure compliance with HIPAA regulations and limit JCAHO's access to, use of, and further disclosure of hospital information, including patient data. Specifically, this continuing work with JCAHO focuses on including more specific language in the Addendum that would further limit JCAHO's access to patient data during the accreditation process and provide greater assurances that hospitals' information is used solely for the *health care operations* purpose of accreditation as intended in the HIPAA medical privacy regulation.

The AHA and state hospital associations continue to tell JCAHO that it is critical that these joint efforts conclude in a timely manner, so that appropriate additional contractual amendments are offered to hospitals before the October 31 deadline. Accredited organizations will need sufficient time before the deadline to consider any additional agreed-to amendments and request that they be incorporated appropriately into their *final* JCAHO 2006 accreditation contracts.

JCAHO has not yet agreed to make any additional changes to the contract but continues to demonstrate a willingness to consider proposals from the AHA and state hospital associations. The AHA and your state hospital association will provide further updates on these discussions and keep you informed of any recommended actions for hospitals. Questions about the new deadline and modified contracting process as well as the ongoing discussions about additional amendments to the contract should be directed to either Don Nielsen, MD, AHA senior vice president for quality, at (312) 422-2708 or by e-mail at dnielsen@aha.org, and Lawrence Hughes, regulatory counsel and director, member relations, at (202) 626-2346 or by e-mail at lhughes@aha.org.