



**American Hospital
Association**

Quality Advisory

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The 2006 JCAHO Accreditation Contract: Update on Unresolved Issues

November 2, 2005

BACKGROUND

In May, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) announced that it was selling analysis of accredited hospitals' data to 14 Blue Cross/Blue Shield health plans covering 29 states, and plans to expand its access to and use of hospitals' patient-level data. For hospitals, this action raises three extremely serious issues and has triggered ongoing discussions between JCAHO and the American Hospital Association (AHA). They are:

- Health Insurance Portability and Accountability Act (HIPAA) compliance issues raised by JCAHO's plans to seek patient-level data from accredited hospitals and its use unrelated to accreditation.
- Necessity for JCAHO separately to collect patient-level performance data that duplicates the Hospital Quality Alliance's efforts.
- Apparent conflicts created when JCAHO, as an accrediting body, sells data analyses to insurance companies and other third parties.

During these discussions, significant differences in opinion have emerged over how the HIPAA requirements affect JCAHO's proposed plans to access and use patient-level data from hospitals in its announced strategy to "over the long haul ... [become] a purveyor of performance data analysis for a variety of purposes."

The AHA has offered specific contract language to JCAHO that addresses all three critical issues. We also proposed that the two organizations jointly ask the Department of Health and Human Services (HHS) for guidance on how HIPAA requirements affect JCAHO's plans. JCAHO has not replied to either offer.

On Monday, October 31, JCAHO sent a "Dear Colleague" letter to state hospital association executives and accredited hospitals to address concerns we raised on your behalf. In the letter, JCAHO noted that "current Joint Commission uses of aggregate performance data are not in violation of HIPAA requirements; are not placing hospitals, as HIPAA 'covered entities' at legal risk; and are not jeopardizing the privacy of the personal health information of any patient.

Indeed, the Joint Commission’s respected expert outside counsel on HIPAA issues has categorically stated that the HIPAA statute and regulations place no limits whatsoever on the Joint Commission’s use of aggregate data.”

The letter further stated that JCAHO is “giving active consideration to how HIPAA requirements may relate to current Joint Commission plans to seek certain patient level data from hospitals in the future.” JCAHO’s letter includes the following specific assurance to hospitals:

“The Joint Commission does not intend to move forward in its quest for the patient-level data in question until the relevant HIPAA issues are resolved. Further, if it is determined – as a result of this resolution – that amendments to the existing accreditation contracts or HIPAA business associate agreements are necessary or appropriate, these will be drafted and made available to individual hospitals before we proceed.”

JCAHO’s October 31 “Dear Colleague” letter can be found under “What’s New” at www.aha.org.

THE AHA’S POSITION

While the AHA is encouraged by JCAHO’s increased awareness of the need to address HIPAA compliance issues, we remain deeply concerned about JCAHO’s lack of urgency in seeking clarification to resolve continuing differences in interpretation. Because JCAHO now is requiring hospitals to sign their 2006 Accreditation Contracts and has announced that it will soon be invoicing hospitals for their nonrefundable annual accreditation subscription fees that are payable upon receipt, the AHA is taking the following actions:

- **Requesting expeditious guidance from HHS to clarify for hospitals and JCAHO how the HIPAA patient privacy requirements affect JCAHO’s proposed activities.**
- **Seeking appropriate amendments to the 2006 JCAHO Accreditation Survey Contract that may be necessitated by any guidance issued.**

It is clear that JCAHO’s duplicative collection of patient-level data would undermine the Hospital Quality Alliance and complicate the public reporting process. It also is clear that JCAHO’s use of accredited hospitals’ information to analyze and sell data to insurance companies and others creates significant conflicts of interest. The AHA will seek to persuade JCAHO to:

- **Limit its collection of patient level performance data to that essential for hospitals’ accreditation survey and evidence of standards compliance.**
- **End its sale of analyses of accredited hospitals’ data to third parties.**

Questions about this Quality Advisory and the AHA’s activities in this area should be directed to either Don Nielsen, M.D., AHA vice president for quality leadership, 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.