



Quality Advisory

May 25, 2006

2006 JCAHO ACCREDITATION CONTRACT UPDATE: NEW PROVISION PROHIBITING JCAHO'S SALE OF DATA ANALYSES

In December 2005, the Board of Commissioners (Board) of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) decided not to sell to third parties analyses of data that JCAHO receives from hospitals through the accreditation process. Since then, the American Hospital Association (AHA) and the Federation of American Hospitals (FAH) have been working with JCAHO to develop an accreditation contract provision that implements the Board's decision. As a result of our discussions, **hospitals now have the opportunity to include in their 2006 accreditation contracts a new provision to restrict JCAHO's sales of data analyses.**

Including the New Provision in the Hospital's 2006 Contract

Both AHA and FAH believe the new contractual provision appropriately reflects JCAHO's current policy to not sell data analyses, and provides hospitals with greater specificity regarding the scope of the restriction. The new provision states:

The Joint Commission agrees not to sell or otherwise collect monies for any quality data derived from information the Joint Commission obtains from any accredited organizations as part of the accreditation process, including such data which relates to a specific identifiable accredited organization. Quality data includes performance measure data, standard compliance data, or any other information about organization performance with regard to any Joint Commission accreditation requirements.

The Joint Commission may provide to third parties, at a nominal fee, lists and labels containing demographic information, accreditation status, and decision date information respecting individual accredited organizations. If an accredited organization so requests, the Joint

Commission may undertake for the requesting accredited organization customized data aggregations and/or analyses of that organization's quality data, such aggregations or analyses to be provided to the organization at the cost of the work performed, as determined by the Joint Commission.

In this Quality Advisory, the AHA and FAH express no opinion about whether individual hospitals should amend their 2006 JCAHO accreditation contracts to include this additional provision. The AHA and FAH urge all hospitals, including hospitals that already have signed and returned a 2006 contract, to review with their legal counsel whether this additional provision is appropriate and desirable to include in their current contracts.

Hospitals that want to include the additional provision will need to go to their JCAHO Extranet Web site to accept the contract amendment. The JCAHO Extranet Web site will allow accredited hospitals to amend their current contracts by selecting this additional term through an automated process. JCAHO will not contact hospitals with a new contract containing the additional provision.

Other Outstanding Contract Issues

The new contractual amendment restricting JCAHO's sales of data analyses does not address JCAHO's desire to collect patient-level data from hospitals. JCAHO continues to indicate a desire to increase its collection of "case-level" data from hospitals and is conducting meetings around the country to make its case for why the data is needed and to solicit feedback from hospital leaders. Through these sessions, JCAHO is being asked about:

- The relationship between the work of the Hospital Quality Alliance and this separate data collection, and the burdens the separate collection might impose on hospitals today, and
- How hospitals can ensure that the provision of this data complies with the HIPAA privacy rule's requirement that hospitals ensure that data given to their business associates are the "minimum necessary" for the purpose for which hospitals have contracted with JCAHO, which is accreditation.

If you have questions about including the new amendment in the hospital's current accreditation contract or the effort to resolve outstanding issues related to collection of patient level data by JCAHO, please contact Lawrence Hughes, regulatory counsel, AHA, at (202) 626-2346 or Jeff Micklos, general counsel, FAH, at (202) 624-1521.