

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

February 19, 2019

Centers for Medicare and Medicaid Services
Attn: CMS-3367-NC
P.O. Box 8016
Baltimore MD 21244-8010

Submitted electronically: [regulations.gov](https://www.regulations.gov)

Re: CMS-3367-NC: Medicare Program: Accrediting Organizations Conflict of Interest and Consulting Services; Request for Information

Justice in Aging appreciates the opportunity to provide comments on the above-referenced Request for Information (RFI).

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

We write to encourage CMS to adopt strong, simple and comprehensive regulations prohibiting accrediting organizations (AOs) from offering consulting services to providers and suppliers they accredit.

We see both CMS and state Medicaid programs increasingly relying on private sector entities to perform or contribute to oversight for their programs. The reliance of CMS on AO accreditation is one example. To preserve program integrity in these circumstances, it is absolutely necessary that that AOs retain their independence and that there be no real or perceived conflict of interest. It seem to us self-evident that an organization taking consulting payment from a provider or supplier that may be subject to accreditation review by that same organization compromises the accrediting process. While we appreciate that AOs may create firewalls between their services, those firewalls do not solve the core issue of financial conflict that taking payment for consulting services creates.

Beneficiaries who rely on Medicare-enrolled providers and suppliers for their health care and often for their life need to be confident that those entities providing their care have met Medicare requirements. It is difficult, if not impossible, to have that confidence if the

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watchdogs ensuring compliance with CMS rules are also contracted with the same suppliers and providers, perhaps with higher compensation, to help those providers and suppliers to pass accreditation requirements. To maintain that confidence and to ensure that, in fact, all suppliers and providers are subject to an accreditation process with equal rigor, we ask that CMS impose a blanket prohibition on such practices.

We also ask that CMS give little credence to any claims that prohibiting AOs from offering consulting services to those they accredit would eliminate a valuable service in improving performance of those being accredited. We recognize that consulting services could be helpful to some suppliers and providers seeking accreditation. However, there is no shortage of health care consulting entities and we are confident that some of them can competently take on AO consulting roles. It is not unreasonable to assume that former employees of AOs might be interested in moving into consulting or that current employees could be recruited away for appropriate compensation. The market would easily fill any perceived void in expertise.

We also note that there are other transparent ways that AOs can offer assistance. For example, an AO could, in a public forum such as a webinar sponsored by CMS or a trade association conference, discuss ways to improve accreditation performance. In such cases, the compensation, if any, would not come from any one entity subject to accreditation and the content of the advice would be more widely available.

As demonstrated in the press report¹ cited by CMS in the RFI, there are many serious challenges in the current operations of AOs and more issues for CMS to address. But, most certainly, reining in consultancy is an important step toward ensuring program integrity and consumer confidence.

Thank you again for the opportunity to submit comments. If any questions arise concerning this submission, please contact Amber Christ at achrist@justiceinaging.org.

Sincerely,



Jennifer Goldberg
Deputy Director

¹ Wall Street Journal, “Hospital Watchdog Gives Seal of Approval, Even After Problems Emerge,” (Sept. 8, 2017), available at www.wsj.com/articles/watchdog-awards-hospitals-seal-of-approval-even-after-problems-emerge-1504889146.