

*Total Annual Hours:* 3,320. (For policy questions regarding this collection, contact Lori Ashby at 410-786-6322.)

Dated: August 31, 2023.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3437-FN]

#### Medicare and Medicaid Programs: Application From the Accreditation Commission for Health Care, Inc. for Continued Approval of its Ambulatory Surgical Center (ASC) Accreditation Program

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces our decision to approve the Accreditation Commission for Health Care, Inc for continued recognition as a national accrediting organization for Ambulatory Surgical Centers that wish to participate in the Medicare or Medicaid programs.

**DATES:** The decision announced in this notice is applicable on September 22, 2023 through September 22, 2027.

**FOR FURTHER INFORMATION CONTACT:** Joy Webb, (410) 786-1667; Erin Imhoff, (410) 786-2337.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Ambulatory Surgical Centers (ASCs) are distinct entities that operate exclusively for the purpose of furnishing outpatient surgical services to patients. Under the Medicare program, eligible beneficiaries may receive covered services from an ASC, provided that certain requirements are met. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 416 of our Medicare regulations. Thereafter, the ASC is subject to regular surveys by a SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may deem that provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. The AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

Accreditation Commission for Health Care's (ACHC's) current term of approval for its ASC accreditation program expires September 22, 2023.

##### II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

##### III. Provisions of the Proposed Notice

On April 3, 2023, we published a proposed notice in the **Federal Register** (88 FR 19645), announcing ACHC's request for continued approval of its Medicare ASC accreditation program. In the April 3, 2023, proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of ACHC's Medicare ASC accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An administrative review of ACHC's: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ASC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ASCs; and (5) survey review and decision-making process for accreditation.

- The comparison of ACHC's Medicare ASC accreditation program standards to our current Medicare ASC conditions for coverage (CfCs).

- A documentation review of ACHC's survey process to do the following:

- ++ Determine the composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing surveyor training.

- ++ Compare ACHC's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against ACHC accredited ASCs.

- ++ Evaluate ACHC's procedures for monitoring accredited ASCs it has found to be out of compliance with ACHC's program requirements. (This pertains only to monitoring procedures when ACHC identifies non-compliance. If noncompliance is identified by a SA through a validation survey, the SA monitors corrections as specified at § 488.9(c)).

- ++ Assess ACHC's ability to report deficiencies to the surveyed ASCs and respond to the ASC's plans of correction in a timely manner.

- ++ Establish ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ Determine the adequacy of ACHC's staff and other resources.

- ++ Confirm ACHC's ability to provide adequate funding for performing required surveys.

- ++ Confirm ACHC's policies with respect to surveys being unannounced.

++ Confirm ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

#### IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the April 3, 2023, proposed notice also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare CfCs for ASCs. We received two (2) timely pieces of correspondence.

*Comment:* Two commenters expressed support for ACHC and their ASC accreditation program and encouraged CMS to approve them for continued recognition as a national AO for ASCs.

*Response:* We appreciate the support from commenters and agree that ACHC should be approved for continued recognition as a national AO for ASCs that wish to participate in the Medicare or Medicaid programs.

#### V. Provisions of the Final Notice

##### A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared ACHC's ASC accreditation requirements and survey process with the Medicare CfCs of part 416, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of ACHC's ASC accreditation application, which were conducted as described in section III of this notice, yielded the following areas where, as of the date of this notice, ACHC has completed revising its standards and certification processes in order to—

- Meet the standard's requirements of all the following regulations:

++ Section 416.44(a), to address that an ASC "must provide a functional and sanitary environment for the provision of surgical services."

++ Section 416.44(b)(2), to address the requirements regarding Life Safety Code (LSC) waivers.

++ Section 416.45(a), to address the regulatory language for granting privileges in accordance with recommendations from qualified medical personnel.

++ Section 416.54(d)(2), to clarify the cycle of testing for the ASC's emergency preparedness plans.

In addition to the standards review, CMS also reviewed ACHC's comparable survey processes, which were conducted as described in section III of this notice, and yielded the following areas where, as of the date of this notice, ACHC has completed revising its survey processes to demonstrate that it uses survey processes that are comparable to state survey agency processes by:

++ Revising the compliant policies and processes to align with the State Operations Manual, Chapter 5 guidance. In particular, ACHC's Administrative Review Offsite Investigation process to align with the triage process to track and trend for potential focus areas during the next onsite survey or complete an onsite complaint investigation.

++ Revising ACHC's ASC Accreditation Process policies to include the applicable sections of the Health Care Facilities Code (HCFC) National Fire Protection Agency (NFPA 99) in accordance with section 416.44(c).

++ Ensuring that all ASC LSC surveyors have received comparable, adequate training or have sufficient experience to make them qualified to survey health care facilities to both the 2012 LSC and 2012 NFPA 99 requirements.

++ Ensuring that each deficiency citation of the Medicare ASC CfCs is documented in such a way that is comparable to the state survey agencies conducting federal Medicare ASC surveys.

++ Ensuring that all findings of non-compliance, that crosswalk to a comparable Medicare CfC, is identified in the final survey report.

++ Providing guidance and instruction to surveyors on determining the appropriate level of citation for LSC deficiencies.

##### B. Term of Approval

Based on our review and observations described in section III and section V of this notice, we approve ACHC as a national accreditation organization for ASCs that request participation in the Medicare program. The decision announced in this notice is effective September 22, 2023, through September 22, 2027 (4 years). In accordance with § 488.5(e)(2)(i) the term of the approval will not exceed 6 years.

While ACHC has taken actions based on the findings annotated in section V.A, of this notice, (Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements) as authorized

under § 488.8, we will continue ongoing review of ACHC's ASC survey processes to ensure full implementation and sustained compliance. In keeping with CMS's initiative to increase AO oversight broadly and ensure that our requested revisions by ACHC are fully implemented, CMS expects more frequent review of ACHC's activities in the future.

#### VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

**Evell J. Barco Holland,**

*Federal Register Liaison, Center for Medicare & Medicaid Services.*

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration for Children and Families

##### Submission for OMB Review; Judicial, Court, and Attorney Measures of Performance: Feedback and Implementation (New Collection)

**AGENCY:** Children's Bureau, Administration for Children and Families, United States Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Children's Bureau, Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new descriptive study, Judicial, Court, and Attorney Measures of Performance (JCAMP): Feedback and Implementation. This expands on earlier work around technical assistance, as approved under Office of Management and Budget (OMB) #: 0970-0593.