

# PUBLICATION

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## Deemed Providers Beware: IPPS Rule Proposes Publicizing Accreditation Survey Results

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The veil of secrecy may soon be lifted from the reports of accreditation organizations like The Joint Commission if a proposal in the April 28, 2017 Inpatient Prospective Payment System (IPPS) Proposed Rule is finalized. As the proposed rule notes, many provider types, including hospitals, home health agencies, psychiatric hospitals, ambulatory surgical centers and outpatient therapy facilities, may bypass surveys from state survey agencies by engaging private accreditation organizations (AOs) to conduct a certification survey. Providers who obtain Medicare certification through an AO survey are known as "deemed" providers under rules set out in 42 U.S.C. § 1395bb and 42 C.F.R. Part 488.1 et seq.

These AOs must be approved by CMS, and the results of their accreditation surveys, as well as any plans of correction that AOs may require based on the accreditation surveys, must be turned over to CMS. In addition, CMS may conduct validation surveys of providers with deemed status either on a representative sample basis or in response to allegations of noncompliance. See 42 C.F.R. § 488.9. Under the current law and regulations allowing providers to participate in Medicare under "deemed" status, CMS may not make the results of an accreditation survey public except in relation to an enforcement action by CMS. 42 U.S.C. § 1395bb(b) and 42 C.F.R. § 488.7(b).

However, under the new proposed change to the regulatory requirements for CMS approval, AOs would be required to make final versions of their survey reports, along with any plans of correction from the provider, available on their websites. It is not clear whether this change can be accomplished through a regulation change alone.

While the proposal is included in the IPPS rule, all AOs would be affected, as would all providers that rely on AOs for Medicare participation. CMS notes that in recent years, the disparity between the results of AO surveys and state-based validation surveys has increased. At the same time, the number of providers relying on deemed status has increased, resulting in an imbalance in information available to consumers.

The change appears to be motivated by CMS's desire for transparency. In the proposed rule, CMS also notes with approval the fact that private organizations like ProPublica and the Association of Health Care Journalists have used publicly-available survey information from nursing facilities to create databases for consumer use. For example, ProPublica has used information available on Medicare's own nursing facility website, Nursing Home Compare, to create its own website, [Nursing Home Inspect](#).

Comments on the IPPS rule are **due on June 13, 2017**.