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I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met. Section 1861 (dd)(1) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice program. 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. In 42 CFR part 418, we specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care.

Generally, to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with our conditions or requirements. Following that certification, the hospice is subject to routine monitoring by a State survey agency to ensure continuing compliance. As an alternative to surveys by State agencies, section 1865(b)(1) of the Act provides that, if the Secretary finds that, through accreditation by a national accreditation body, a provider entity demonstrates that all of our applicable conditions and requirements are met or exceeded, the Secretary will deem that the provider entity has met the applicable Medicare requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, CMS shall "deem" those provider entities as having met the requirements. Section 1865(b)(2) of the Act further requires that the Secretary's findings concerning review and reapproval as a recognized accreditation

program for hospices consider the reapplying accreditation organization's—

- Requirements for accreditation;
 - Survey procedures;
 - Ability to provide adequate resources for conducting required surveys;
 - Ability to supply information for use in enforcement activities;
 - Monitoring procedures for provider entities found out of compliance with the conditions or requirements; and
 - Ability to provide the Secretary with necessary data for validation.
- Section 1865(b)(3)(A) of the Act requires that the Secretary publish a notice within 60 days of receipt of a written request; the notice must—
- Identify the national accreditation body making the request;
 - Describe the nature of the request; and
 - Provide at least a 30-day public comment period.

In addition, we must publish a finding of approval or denial of the application within 210 days from the receipt of the completed request.

Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). Our regulations require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner, as we determine.

JCAHO's term of approval as a recognized accreditation program for hospices expires June 18, 2003.

The purpose of this proposed notice is to inform the public of our consideration of JCAHO's request for approval of continued deeming authority for hospices. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions for participation for hospices.

II. Evaluation of Deeming Authority Request

On November 26, 2002, JCAHO submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for hospices. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of JCAHO will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of JCAHO standards for hospice care as compared with our comparable hospice conditions of participation as described in our regulations at § 418.1 through § 418.405.
- JCAHO's survey process to determine the following:

- The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
- The comparability of JCAHO processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- JCAHO's processes and procedures for monitoring providers or suppliers found out of compliance with JCAHO program requirements. These monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7 (d).
- JCAHO's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- JCAHO's capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of JCAHO's staff and other resources, and its financial viability.
- JCAHO's capacity to adequately fund required surveys.
- JCAHO's policies with respect to whether surveys are announced or unannounced.
- JCAHO's agreement to provide us 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).

III. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)