

## **The Verdict is In: Joint Commission Loses Its Statutory Deeming Authority**

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On July 15, 2008 Congress voted to override President Bush's veto of the Medicare Improvements for Patients and Providers Act of 2008. In so doing, Congress revoked the unique deeming authority of the Joint Commission.<sup>1</sup>

Since 1965, Joint Commission has enjoyed unique deeming status because, by Federal statute<sup>2</sup>, hospitals accredited by the Joint Commission were deemed to meet the Medicare Conditions of Participation. In 1965, the year the Medicare and Medicaid programs were established, Congress did not have much experience in the health care business. Thus Congress deferred to the expertise of Joint Commission, a professional accreditation organization established in 1951. Congress was so confident in the Joint Commission's expertise that it prohibited federal authorities from issuing standards on patient health and safety for hospitals higher than comparable requirements for hospital accreditation by Joint Commission.<sup>3</sup> Pub. L. No. 89-97 § 102 (a), 79 Stat. 286, 316 (1965).

By statutorily granting deeming authority, Congress limited CMS' oversight of Joint Commission. Even if CSM detected problems, CMS could not restrict or remove Joint Commission's accreditation authority.

Since then, Congress has grown increasingly critical of the Joint Commission's effectiveness. In its July, 2004 report, the Government Accountability Office (GAO) concluded that 78% of the time the Joint Commission survey process did not identify serious deficiencies that were found by State Survey Agencies. The GAO recommended that "given the serious limitations in (Joint Commission's) accreditation program and that efforts to improve this program through informal action by CMS have not led to necessary improvements, Congress should consider giving CMS the same kind of authority over (Joint Commission's) hospital accreditation program that it has over all other Medicare accreditation programs."<sup>4</sup>

Congress' revocation of Joint Commission's special authority means that Joint Commission will have to apply for deeming status, just like all other accreditation organizations. To be approved for deeming authority, an accrediting organization must demonstrate that its program meets or exceeds the Medicare requirements for which they are seeking the authority to deem compliance.

Congress has assured accredited organizations that their present accreditation status is not affected by the change. Congress has given Joint Commission 24 months to transition to its new status.

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<sup>1</sup> Medicare Improvements for Patients and Providers Act of 2008 is available at: <http://www.opencongress.org/bill/110-h6331/text>.

<sup>2</sup> 42 U.S.C. §§1395bb(a).

<sup>3</sup> Pub. L. No. 89-97 § 102 (a), 79 Stat. 286, 316 (1965).

<sup>4</sup> U.S. General Accounting Office, "Medicare. CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals," GAO-04-850 (Washington, D.C.: July, 2004) available at <http://www.gao.gov/new.items/d04850.pdf>