



COMMISSIONER
Chris Traylor

January 25, 2011

To: Home Health Agencies (HHAs) Seeking Medicare Certification

Subject: **Provider Letter (PL) #11-03** – The Centers for Medicare and Medicaid Services (CMS) Direction Regarding Workload Prioritization (**Replaces PL #07-17 and #07-04**)

The purpose of this letter is to provide notification to home health agencies seeking Medicare certification that the Department of Aging and Disability Services (DADS) is seeking clarification to three questions previously published in PL #07-17. This letter continues to publish the same questions and answers as written in PL #07-17 with the exception of questions #7, 16 and 18, which are pending clarification from CMS. This letter continues to notify home health agencies seeking Medicare certification of an important CMS announcement to DADS regarding the scheduling of initial certification surveys. In 2007, CMS directed DADS to immediately cease scheduling initial Medicare certification surveys of HHAs. Presently, DADS cannot anticipate when it will resume scheduling these surveys. [For related information regarding this CMS directive, please refer to the attached question and answer document.](#)

CMS Direction

CMS sets its expectations for DADS' certification survey activity under the state agency contract. The "FY2011 Mission & Priority Document (MPD)" describing CMS' survey and certification mission continues to "summarize CMS' long-standing policy for Medicare initial surveys," which was initially clarified in a Survey and Certification (S&C) letter dated November 5, 2007. The S&C from CMS directed DADS that initial certification surveys, considered Tier IV work as noted in the chart below, must not be done unless all higher-tier work, Tiers I and II, is completed.

CMS HHA Tier Descriptions*
Tiers I, II, and IV

Tier I	<ul style="list-style-type: none"> • Recertification surveys conducted on a 36-month cycle • Complaint investigations • Surveys when, as a result of a complaint investigation, substantiated findings indicate the agency is out of compliance with a condition of participation • 5% Validation surveys for HHAs with deemed accreditation by an approved accrediting entity
Tier II	<ul style="list-style-type: none"> • 5% Additional Targeted Sample: States annually survey 5% of the HHAs that are identified as those agencies more at risk of providing poor care
Tier IV	<ul style="list-style-type: none"> • Additional surveys (beyond tiers 1-3) based on state judgment regarding HHAs most at risk of providing poor care and to equal an average survey cycle of every 24 months • Initial certification surveys • Initial branch office recommendations and surveys

****From CMS FY2011 MPD. Tier III does not apply to HHAs.***

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If you have questions regarding this provider letter, please contact a home and community support services agency program specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

VLD:dIm

Attachment

**CMS Direction Regarding Workload Prioritization
Related Questions and Answers**

Question 1:

Are hospice agencies included in this direction from CMS?

Yes. Hospice agencies were specifically addressed in a letter from CMS issued on May 17, 2007.

Question 2:

My agency is only requesting a licensure survey. Does this direction apply to me?

No. This direction applies only to initial Medicare certification surveys. There is no cessation in initial state licensure surveys. Initial state licensure surveys will be conducted at the same level and pace as before when an agency submits a timely request. Refer to 40 Texas Administrative Code (TAC) §97.521 for requirements for the initial licensure survey.

Question 3:

Is there a cessation or moratorium on Medicare-certified agencies in Texas?

No. There is not a cessation or moratorium on Medicare-certified home health agencies in Texas.

Question 4:

I have heard talk of a certificate of need. Is it true an agency may demonstrate “a need for services” in a geographical area of the state and then be granted Medicare certification?

No. There is no certificate of need in Texas for home health agencies at this time. There is no mechanism for DADS to consider a need for services in geographical areas of the state.

Question 5:

Will CMS continue authorizing DADS to conduct Medicare investigations and other Medicare surveys?

Yes. DADS continues to conduct recertification surveys and investigations of Medicare-certified agencies under its agreement with CMS.

Question 6:

How does this direction apply to a change of ownership (CHOW) for a certified agency?

It depends on which part(s) of the agency the owner chooses to sell. For instance, the owner of a licensed home health agency, licensed and certified home health agency, and hospice agency may seek to sell only the licensed home health agency and continue to provide Medicare services

under the licensed and certified category. In such cases, the ownership of the certified home health agency would not transfer to the new owner.

- a. If the ownership of the certified home health agency operations transfers to a new owner in the transaction without a gap in services, the CHOW would not be included in this direction. The agency would be issued a new license number if approved by DADS and would retain the existing provider number if approved by CMS.
- b. If the ownership of the certified home health agency operations does not transfer to the new owner, the new owner would be required to submit a new application for certification if the owner wishes to provide Medicare services. A new certification survey would be required and would not be completed until all Tier I and II regulatory activity is up to date and approved by CMS.

Question 7:

~~I submitted my request for a certified parent or branch agency before the date of this letter. Will DADS forward my application to CMS for approval?~~

~~No. DADS may not forward the application until all Tier I and II regulatory activity is up to date.~~

Question 8:

How does this direction apply to a certified agency that wishes to move to a new location?

- a. A certified agency that moves to a new location **within** its service area would not be affected by this direction.
- b. According to CMS Regional Survey and Certification Letter No. [02-06](#), a certified agency that moves to a new location **outside** of its service area is considered to have ceased doing business in the approved service area. Such an agency would have to be recertified.

Question 9:

DADS conducted an initial certification survey of my agency's parent and/or branch office before this direction was issued but indicated that the agency was denied certification because it failed to meet the Medicare Conditions of Participation. How does this direction affect my agency?

If an agency failed to meet the Medicare Conditions of Participation during the initial survey, certification is denied, and no revisit will be allowed. The agency, if it wishes to continue to seek Medicare certification, must reapply and request another initial survey. See question 10 ~~and 18 for further information.~~

Question 10:

May home health agencies seek certification through an approved accrediting organization?

Yes. The restriction on conducting initial certification surveys applies only to DADS as the state

survey agency. Approved Medicare certification accrediting organizations such as The Joint Commission, Community Health Accreditation Program, Inc. (CHAP), and Accrediting Commission for Health Care (ACHC) may conduct initial certification surveys consistent with established practices and procedures.

Question 11:

My agency has decided to seek accreditation through The Joint Commission, CHAP, or ACHC. What do I need to do?

The agency must apply for and be granted a state license to provide home health services first. The agency may then contact the accrediting organization directly for information regarding the accreditation standards. The agency must inform DADS in writing when, or if, accreditation status is granted by an accrediting organization in accordance with 40 TAC §97.216 (relating to Change in Agency Certification or Accreditation Status). The accrediting organization will process the request for certification according to CMS direction.

To successfully exercise this option, the agency must submit the Medicare Enrollment Application, form CMS 855A, to the fiscal intermediary (FI). The agency must also submit the Health Insurance Benefit Agreement, form CMS 1561, and Office of Civil Rights forms to DADS. The Medicare Enrollment Application must have a recommendation from the FI, and there must be a complete OASIS test transmission. The forms referenced may be found on the DADS provider Web site at <http://www.dads.state.tx.us/providers/HCSSA/forms.html>.

Question 12:

My agency has chosen to use ACHC as our accrediting organization. How will this affect my agency?

ACHC is not approved to exempt agencies from state licensing surveys in Texas. As a result, DADS will conduct licensure survey activity and ACHC will conduct certification surveys. The agency must continue to meet all licensure standards to maintain state licensure.

Question 13:

My agency began the accreditation process and is nearing the end of the licensure period with no accreditation or initial survey. What do I do?

The agency must continue to satisfy all licensure requirements, including 40 TAC §97.521 (relating to Requirements for an Initial Survey), which requires the agency to have requested the initial licensure survey at least six months before the license expiration date. An agency that fails to request the initial survey in a timely manner may jeopardize the renewal of the license. The renewal application must be submitted within the time frames specified in 40 TAC §97.17 (relating to Application Procedures for a Renewal License).

Question 14:

If an agency parent and branch office are ready for and have requested the initial certification

survey, may surveyors perform the initial certification survey while conducting the initial licensure survey since they are already on site?

No. DADS will not conduct the initial Medicare survey until all Tier I and Tier II survey and certification activity is up to date and given authorization by CMS.

Question 15:

If surveyors visit a licensed-only agency that is pending initial certification to perform a complaint investigation, may the surveyor also perform the initial certification survey if the agency has sent notice of readiness?

No. According to CMS, this scenario does not warrant an initial Medicare certification survey. CMS does not have authority to conduct a complaint investigation at an uncertified agency; thus the investigation is not conducted under the contract with CMS. A state licensing investigation will be limited to investigation of the complaint allegations only.

Question 16:

~~How does this direction apply to new branch offices of an agency with Medicare certification?~~

~~Review and recommendation for CMS approval of an initial branch office is considered Tier IV activity and will not be conducted until all Tier I and Tier II survey and certification activity is up to date and given authorization by CMS.~~

Question 17:

Can an agency still open a licensed-only branch office?

Yes. This direction does not apply to licensing activity.

Question 18:

~~Can an agency still apply for a licensed and certified branch office and wait for DADS to resume certification survey activity?~~

~~Yes. The agency may still apply for a licensed and certified branch office. DADS will process the application for any licensed only categories indicated. The agency may seek accreditation of the branch according to CMS and accrediting organization standards.~~