



COMMISSIONER  
Jon Weizenbaum

April 13, 2015

To: Home Health Agencies (HHAs) Seeking Medicare Certification

Subject: **Provider Letter No. 2015-09** – Direction from the Centers for Medicare & Medicaid Services (CMS) on Prioritization of Initial Medicare Certification Surveys (Replaces PL 13-09)

The Texas Department of Aging and Disability Services (DADS) issues this letter to provide clarification and notification to HHAs seeking initial Medicare certification of the current CMS survey and certification (S&C) requirements. Each year, CMS publishes a Mission and Priority Document (MPD) that describes the S&C workload and program requirements for state agencies. The MPD describes how state agencies must prioritize S&C activities. The MPD includes guidance on the impact of HHAs applying for initial certification for a parent location and on obtaining certification for a branch office. Under its agreement with CMS, DADS must schedule and conduct surveys per the S&C priority rankings set forth in the MPD.

### **CMS Direction**

The MPD contains four priority tiers (Tiers I, II, III, and IV) that reflect statutory mandates and program emphases. DADS must complete S&C activities in Tiers I, II and III before planning to complete Tier IV activities. Initial Medicare certification surveys for HHAs are a Tier IV priority because an HHA has the option to achieve deemed status (by demonstrating compliance with Medicare health and safety standards) through a survey conducted by a CMS-approved national accrediting organization (AO). Together with CMS, DADS prioritizes the workload within Tier IV and consults with the CMS Regional Office (RO) in the prioritizing process to ensure that statutory requirements are met. The HHA is responsible for arranging the Medicare survey with the AO.

The MPD has special provisions for a priority exception request that is based on “access-to-care” problems. An HHA applying for initial Medicare certification may apply to CMS via DADS for an exception to the Tier IV priority assignment if the lack of Medicare certification would cause significant “access-to-care” problems for Medicare home health beneficiaries.

For related information regarding CMS direction, please refer to the attached question and answer document.

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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]*

Mary T. Henderson  
Assistant Commissioner  
Regulatory Services

**CMS Direction Regarding  
Home Health Agency (HHA) Workload Prioritization  
Questions and Answers**

**Question 1:**

Does CMS direction to DADS regarding workload prioritization include hospice agencies?

**Answer:**

Yes. Refer to Provider Letter **15-10** for information on hospice agencies.

**Question 2:**

My agency is requesting only an initial licensure survey for the licensed home health services category. Does this direction regarding initial Medicare certification surveys apply to my agency?

**Answer:**

No, this direction applies **only** when an agency is requesting an initial licensure survey for the licensed home health services category **and** has also applied for Medicare certification as a home health agency. DADS will continue to conduct initial state licensure surveys of the licensed home health services category after an agency submits DADS Form 2020 Notification of Readiness for Initial Survey to the designated survey office. Refer to Texas Administrative Code, Title 40, Part 1, Chapter 97, §97.521, relating to Requirements for an Initial Survey.

**Question 3:**

Is there a cessation or moratorium on new Medicare-certified home health agencies (HHAs) in Texas?

**Answer:**

Yes. There is currently a moratorium on HHAs seeking Medicare certification in the metropolitan areas of Dallas, TX and Houston, TX. The moratorium applies only to licensed and certified home health agencies (L&CHHS) and does not affect licensed-only HHAs under categories of licensed home health (LHH), personal assistance services (PAS), or hospice. For more information, please refer to [Provider letter 14-12](#).

**Question 4:**

I have heard talk of “access-to-care” exceptions. May an HHA applying for initial Medicare certification make a priority exception request for “access-to-care” in a geographical area of the state and then be granted an initial Medicare certification survey by DADS?

**Answer:**

A licensed-only HHA that has applied for and requested Medicare certification may submit a written request to CMS via DADS for an exception to the priority assignment of the initial Medicare certification survey if lack of Medicare certification would cause significant “access-to-care” problems for patients served by the agency. However, before DADS will forward the request to CMS for approval, the agency must provide data and other evidence that effectively establishes the probability of serious, adverse patient healthcare access consequences if the agency is not enrolled to participate in Medicare. DADS will communicate with CMS before forwarding the

request to the CMS RO. For further guidance on “access-to-care” procedures, please refer to [Regional S&C letter No. 10-01](#).

**Question 5:**

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

**Answer:**

Yes. DADS continues to conduct recertification surveys, validation surveys and complaint investigations of Medicare-certified HHAs under its agreement with CMS.

**Question 6:**

How does this direction regarding an initial Medicare certification survey apply to a change of ownership (CHOW) for a Medicare-certified HHA?

**Answer:**

If a Medicare-certified HHA undergoes a CHOW, the agency must seek clarification from CMS and its applicable Regional Home Health Intermediary/Medicare Administrative Contractor to determine if the provider agreement will transfer to the new owner. If CMS determines that the new owner of the HHA must apply for initial Medicare certification, the agency’s initial Medicare certification survey (if the agency does not have accreditation with deemed status) would be a Tier IV activity for DADS unless the agency meets the criteria in Question 4. The HHA may choose to go through an AO for its initial Medicare certification survey (refer to Question 9).

**Question 7:**

If a **non-deemed** Medicare-certified HHA wishes to relocate, the HHA must contact CMS. If CMS determines that the HHA is required to seek initial Medicare certification because of the agency’s relocation, how does this direction regarding initial Medicare certification surveys apply?

**Answer:**

Since CMS reviewed your request to relocate and determined that your HHA must seek initial Medicare certification because of the agency’s relocation, you may refer to Questions 4 and 9 for an option for an initial Medicare certification survey for HHAs.

**Question 8:**

May a licensed-only HHA seek initial Medicare certification through a CMS-approved national accrediting organization (AO) with deeming authority?

**Answer:**

Yes. CMS-approved national AO with deeming authority such as the Joint Commission (JC), the Community Health Accreditation Program, Inc. (CHAP) or the Accreditation Commission for Health Care (ACHC) may conduct initial Medicare certification surveys for HHAs.

**Question 9:**

My licensed-only HHA has applied for and requested initial Medicare certification and has decided to seek initial Medicare certification through a CMS-approved national AO with deeming authority such as the JC, CHAP or ACHC. What do I need to do?

**Answer:**

The licensed-only HHA must request an initial licensure survey by submitting the DADS Form 2020 Notification of Readiness for Initial Survey no later than six months after the effective date of an agency's initial license (refer to 40 TAC §97.521(a)). The agency must also contact a national AO directly for information regarding the initial Medicare certification and accreditation process.

**Question 10:**

My licensed-only HHA began the initial Medicare certification accreditation process and is nearing the end of the agency's two-year licensure period with no accreditation or initial Medicare certification survey. My HHA has met the requirements in 40 TAC §97.521 for an initial licensure survey conducted by DADS. What do I do?

**Answer:**

To continue providing home health services to clients, an agency must submit a renewal application within the time frames specified in 40 TAC §97.17 relating to Application Procedures for a Renewal License.

**Question 11:**

If a licensed-only HHA requested certification and has submitted DADS Form 2020 to the designated survey office, will DADS conduct an initial Medicare certification survey?

**Answer:**

DADS surveyors will conduct **only** the initial licensure survey. DADS **will not** conduct an initial Medicare certification survey until all Tier I, II and III survey activity is complete in addition to the completion of all higher priority Tier IV survey activity. The licensed-only HHA may refer to Questions 4 and 9 for an option for an initial Medicare certification survey. Additionally, please refer to Question 3 on the moratorium regarding new Medicare-certified home health agencies in certain counties.

**Question 12:**

While conducting a licensure complaint investigation, may a surveyor also conduct an initial Medicare certification survey if a licensed-only HHA has applied for and requested Medicare certification and has sent notice of readiness to DADS for its initial Medicare certification survey?

**Answer:**

No. Because the onsite visit is to conduct a licensure complaint investigation **only**, DADS surveyors will be determining only the agency's compliance with state licensing regulations.

**Question 13:**

While conducting a complaint investigation, may a surveyor also perform a Medicare administrative review of a branch office if a non-deemed parent Medicare-certified HHA has applied for and requested Medicare certification for the branch office?

**Answer:**

No. Because the onsite visit is to conduct a complaint investigation, DADS surveyors will only conduct the complaint investigation.

**Question 14:**

Can a parent Medicare-certified HHA submit an application to DADS for a Medicare-certified branch office license or to request to add the licensed and certified home health services category to an existing branch office license?

**Answer:**

Yes, a parent Medicare-certified HHA may submit an application to DADS for an initial branch office license. However, DADS will initially process the application for a licensed-only HHA branch office license. A parent HHA's request to apply for Medicare-certification of a branch office is a Tier IV survey activity and will not be conducted by DADS until all Tier I, II, and III survey activity is complete, in addition to the completion of all higher priority Tier IV survey activity.

**List of AOs and websites:**

Community Health Accreditation Partner (CHAP): <http://www.chapinc.org/>

The Joint Commission: <http://www.jointcommission.org/>

Accreditation Commission for Health Care, Inc. (ACHC): <http://www.achc.org/>