



COMMISSIONER
Chris Traylor

January 25, 2011

To: Hospice Agencies Seeking Medicare Certification

Subject: **Provider Letter (PL) #11-04** – The Centers for Medicare and Medicaid Services (CMS) Direction Regarding Workload Prioritization (**Replaces PL #07-18 and #07-15**)

The purpose of this letter is to notify hospice agencies seeking initial Medicare certification that the Department of Aging and Disability Services (DADS) is seeking clarification to three questions previously published in PL #07-18. This letter continues to publish the same questions and answers as written in PL #07-18 with the exception of questions #6, 15 and 17, which are pending clarification from CMS. This letter continues to notify hospice 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 hospices. 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, II and III, is completed. The FY 2011 MPD clarified special provisions that apply for priority exception requests of access-to-care issues. Hospices may apply to CMS via DADS requesting consideration for an exception to the priority assignment of the initial certification survey. DADS will review the request and forward the request to the CMS regional office for final review and approval.

CMS Hospice Tier Descriptions*

Tier I	<ul style="list-style-type: none"> States conduct validation surveys of deemed hospices as directed by CMS.
Tier II	<ul style="list-style-type: none"> 5% Targeted Surveys: States annually survey 5% of non-deemed Hospices based on State judgment for providers more at risk of quality problems.
Tier III	<ul style="list-style-type: none"> 6.5-year Interval: additional surveys are conducted to ensure no more than 6.5 years elapse between surveys.
Tier IV	<ul style="list-style-type: none"> Additional surveys are done (beyond Tiers 2 & 3) such that all providers in the State are surveyed, on average, every 6 years. Initial certification and expansion of inpatient hospice.

***From CMS FY2011 MPD.**

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If you have questions about this 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:

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 2:

Has CMS issued a moratorium on Medicare certification of new hospice agencies in Texas?

No, CMS has not issued a moratorium on Medicare certification of new hospice agencies in Texas.

Question 3:

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?

Yes. If the agency feels it can justify the need for a Medicare-certified hospice agency, it must send all information justifying the need to DADS, who will in turn notify CMS of the request. CMS has stated it will not allow DADS to perform “initial Medicare surveys of any provider type without CMS approval of a need based on access to care.”

Question 4:

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 5:

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 hospice agency and licensed and certified hospice agency may seek to sell only the licensed hospice agency and continue to provide Medicare services under the licensed and certified category. In such cases, the ownership of the certified hospice agency would not transfer to the new owner.

a. If the ownership of the certified hospice agency 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 hospice 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 scheduled unless the agency is able to successfully demonstrate to CMS that there is a verifiable access-to-care issue.

Question 6:

~~If I submitted a request for a certified parent or alternate delivery site agency before the date of this letter, will DADS forward my application to CMS for approval?~~

~~No. DADS will not forward the application unless the agency is able to successfully demonstrate a verifiable access to care need. The agency, if it wishes to continue to seek Medicare certification, may continue to wait for DADS until it is authorized to conduct the survey, or may apply with an accrediting organization. See questions 9 and 17 for further information on accrediting.~~

Question 7:

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. In this situation, the agency would have to obtain a new initial certification.

Question 8:

DADS conducted an initial certification survey of my agency's parent and/or alternate delivery site 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. Additionally, the agency must successfully demonstrate a verifiable access-to-care need. See questions 9 ~~and 17~~ for further information on accrediting.

Question 9:

May hospice 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 10:

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

First, the agency must apply for and be granted a state license to provide hospice services. 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 the Office of Civil Rights packet and obtain a National Provider Identifier (NPI) number by calling 1-800-465-3203 or TTY 1-800-692-2326. The Medicare Enrollment Application must have a recommendation from the FI. The forms referenced may be found on the DADS provider Web site at <http://www.dads.state.tx.us/providers/HCSSA/forms.html>.

Question 11:

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 12:

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 13:

If an agency parent and alternate delivery site is ready for and has 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 given authorization to do so by CMS.

Question 14:

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 15:

~~How does this direction apply to new alternate delivery sites of an agency with Medicare certification?~~

~~Review and recommendation for CMS approval of an initial alternate delivery site is considered Tier IV activity and will not be conducted until DADS is given authorization to do so by CMS.~~

Question 16:

Can an agency still open a licensed-only alternate delivery site?

Yes. This direction does not apply to licensing activity.

Question 17:

~~Can an agency still apply for a licensed and certified alternate delivery site and wait for DADS to resume certification survey activity?~~

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