



COMMISSIONER  
Adelaide Horn

November 12, 2007

To: Nursing Facilities and Hospitals Seeking Medicare Certification for a Skilled Nursing Care Unit (SNF)

Subject: **Provider Letter #07-30** – Centers for Medicare and Medicaid Services (CMS) Direction Regarding Workload Prioritization of Initial Certification Surveys

CMS contracts with the Department of Aging and Disability Services (DADS) Regulatory Services Division to receive and review applications and perform initial certification surveys for SNFs. DADS must perform this work according to CMS policy and direction. CMS recently issued two major policy documents, the CMS Fiscal Year 2008 Mission and Priority Plan and CMS Survey and Certification Letter 08-03 (available at <http://cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp#TopofPage>). These documents outline how state survey agencies must prioritize their survey and certification activities for fiscal year 2008.

The CMS Fiscal Year 2008 Mission and Priority Plan prioritizes survey and certification workload into four priority tiers that reflect statutory mandates and program emphases. CMS considers initial Medicare certification surveys of all Medicare providers, including SNFs, to be a Tier 4 (the lowest priority) activity for state survey agencies. Therefore, DADS must consider initial SNF certifications as its lowest work activity priority unless the CMS Region VI office reviews and gives approval to DADS to conduct the initial certification survey due to significant access-to-care problems for Medicare beneficiaries served by the provider or similar special circumstances.

Providers that want to seek a higher workload priority for their application may submit a request to the Regulatory Services Division of DADS. Regulatory Services will forward a provider's request to CMS for direction in granting an exception to the tiered workload prioritization plan if lack of Medicare certification would cause significant access-to-care problems for Medicare beneficiaries. Providers should submit all priority exception requests to the appropriate DADS Regulatory Services regional director.

DADS does not require a specific form for priority exception requests. However, the burden is on the applicant to provide data and other evidence that effectively establishes the probability of adverse beneficiary health care access consequences if the provider is not enrolled to participate in Medicare. CMS will not endorse any request that fails to provide such evidence and fails to establish the special circumstances surrounding the provider's request.

DADS Regulatory Services will continue to accept applications for Medicare certification of SNFs and to process those applications within our mandated workload prioritization plan. The time frame for processing these applications is likely to be lengthened due to their low priority level.

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We have addressed potential provider questions and answers in the attached document.

If you need additional information or have specific questions related to the information in this memo, please contact our office of Survey Operations at (512) 438-2627.

Sincerely,

[signature on file]

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

VLD:ca

Attachment

## **Attachment to Provider Letter 07-30**

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

**Question 1:** Has CMS declared a moratorium on initial Medicare certification surveys of Skilled Nursing Facility (SNF) units in Texas?

**Answer:** No, CMS has not declared a moratorium on initial Medicare certification surveys of SNF units or any other provider types. DADS Regulatory Services will continue to conduct initial Medicare certification surveys of SNF units based on the CMS FY 2008 workload prioritization plan for state survey agencies. (See CMS S&C Letter 08-03 at <http://cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp#TopofPage>.) The CMS workload prioritization plan considers initial Medicare certification surveys to be a Tier 4 (the lowest priority) work activity for state survey agencies.

**Question 2:** What is included in Tier 1 and 2 activities?

**Answer:** Tier 1 activities are recertification surveys for nursing facilities, conducted on a 9 to 15 month schedule, and priority one complaint and incident investigations initiated within prescribed time frames. Tier 2 activities are priority two, three, and four complaint and incident investigations initiated within prescribed time frames.

**Question 3:** Will DADS Regulatory Services continue to conduct recertification surveys of existing SNF units according to the CMS-mandated 9-15 month interval?

**Answer:** Yes, DADS will continue to conduct recertification surveys of existing SNF units on the 9-15 month interval. The CMS workload prioritization plan designates SNF recertification surveys as Tier 1 (the highest priority) work activity for state survey agencies.

**Question 4:** How does this revised prioritization process apply to a nursing facility, currently certified for Medicaid, that seeks to add Medicare certification?

**Answer:** If a Medicaid-certified nursing facility seeks Medicare certification, CMS does not require DADS to conduct an on-site survey to verify compliance for Medicare certification. In this circumstance, permission is not required from CMS for DADS to review the Medicare application. DADS is allowed to process the Medicare application and recommend certification based on the information obtained during the most recent Medicaid survey. (See section 7002 of the CMS Medicare State Operations Manual, CMS Publication 100-07.)

If a provider is in compliance with Medicaid certification requirements and had no intervening periods of noncompliance since its most recent Medicaid survey, DADS will complete the necessary steps required for desk review of the certification request and

forward the results to CMS with a recommendation that Medicare certification be approved effective the date of the last Medicaid recertification survey.

If, since the provider's last Medicaid survey, there is a period of noncompliance, DADS will follow the same steps but the recommended effective date will be the date of the last finding of substantial compliance with Medicaid regulations from a survey, investigation, or follow-up visit.

**Question 5:** Will the CMS workload prioritization plan apply to the change of ownership (CHOW) process for existing Medicare-certified SNFs?

**Answer:** The CHOW transaction is not considered an "initial" Medicare certification if DADS approves the change of owners and the new owner retains the existing Medicare provider agreement (with the approval of CMS). If the new owner requests a new Medicare provider agreement, the request will be treated as a new initial Medicare certification.

**Question 6:** What are the factors that will influence the length of time an applicant for an initial Medicare SNF certification might have to wait for DADS to conduct an initial survey?

**Answer:** The CMS workload prioritization plan requires DADS to ensure that it will complete all Tiers 1 and 2 workload activities before planning for lower level, Tiers 3 and 4 workload activities. Therefore, DADS Regulatory Services regional offices will schedule initial SNF certification surveys only when higher priority workload activity is current in terms of the time frame for its completion and as time allows for initial survey activity. The CMS Region VI office in Dallas must approve all initial Medicare SNF certification surveys. We expect this approval process to add some time to the overall process of approving an initial SNF certification.

**Question 7:** What information must an applicant submit in a priority exception request? How will DADS and CMS review a priority exception request?

**Answer:** Providers must submit information that will show how the lack of Medicare SNF certification will significantly deprive beneficiaries served by the provider of access to SNF-related services in their geographical area. Special consideration will also be given to providers who are opening nursing facilities using the Greenhouse® model. There is no specified format for submitting information. Providers should direct the request, with supporting data and information, to the appropriate DADS Regulatory Services Division regional director. The DADS Regulatory Services Division regional director will review and forward the request (with appropriate recommendations) to the director of Survey Operations, who will in turn forward the request to the CMS Region VI office for a final decision.