



COMMISSIONER
Jon Weizenbaum

August 21, 2013

To: Home Health Agencies (HHAs) Seeking Medicare Certification

Subject: **Provider Letter (PL) 13-09** –Centers for Medicare & Medicaid Services (CMS)
Direction Regarding Workload Prioritization (Replaces PL 11-16, 11-03, 07-17 and 07-04)

The Texas Department of Aging and Disability Services (DADS) is issuing this letter to provide clarification and notify home health agencies 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 includes guidance on the impact of HHAs applying for initial certification for a parent location and on obtaining certification for a branch office. DADS must schedule and conduct survey activities in accordance with MPD requirements and the S&C priority ranking they provide. CMS sets its expectation for DADS S&C activity under the state agency (SA) contract as reflected in the chart below.

CMS Direction

The MPD contains three priority tiers for HHAs (Tier I, II and IV) that reflect statutory mandates and program emphases. DADS must complete S&C activities in Tier I and II before planning to complete Tier IV activities. Initial Medicare certification surveys for DADS 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 the statutory requirements are met.

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. DADS may choose to make a recommendation to CMS before forwarding the request to the CMS RO.

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

CMS HHA Tier Descriptions*	
Tier I	<ul style="list-style-type: none">• Recertification surveys conducted on a 36-month cycle• 5% Validation surveys: States annually survey a representative sample of deemed HHAs specified by CMS during the year.• Complaint investigations for deemed and non-deemed HHAs triaged as a high potential for immediately jeopardy• Extended surveys when, as a result of a complaint investigation, substantiated findings indicate a deemed and non-deemed HHA is out of compliance with a condition of participation
Tier II	<ul style="list-style-type: none">• 5% Additional Targeted Sample: States annually survey 5% of non-deemed HHAs that are identified as those agencies that are more at risk of providing poor care• Complaint investigations for non-deemed HHAs triaged as not likely to be immediate jeopardy• Relocation surveys of non-deemed parent HHAs displaced during a public health emergency declared by the Health and Human Services Secretary, at SA discretion (this does not extend to relocation of non-deemed HHA branches)
Tier IV	<ul style="list-style-type: none">• Additional recertification surveys (beyond Tier I & II) based on the SA judgment regarding non-deemed HHAs that are more at risk of providing poor care so that all HHAs are surveyed on average every 24 months• Initial certification surveys for a non-deemed HHA unless the CMS RO approves an exception to the priority assignment of an initial survey due to significant "access-to-care" problems• Surveys of non-deemed HHAs following a change of ownership where the provider agreement and billing privileges do not convey to the new owner• Surveys of de-activated non-deemed HHAs• Administrative action for a non-deemed HHA branch office

****From CMS FY 2013, MPD, Tier III does not apply to HHAs.***

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]

Susan E. Davis
Interim Assistant Commissioner
Regulatory Services

SED:cg
Attachment

**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 **11-17** 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:

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:

No. Currently there is no cessation or moratorium on initial Medicare certification of new HHAs in Texas.

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 also refer to Question 10 for an option for an initial Medicare certification survey for HHAs.

Question 7:

My licensed-only HHA applied for and requested initial Medicare certification and submitted a request to DADS for an initial Medicare certification survey **before** this direction was issued in June 2007. Will DADS conduct the initial Medicare certification survey of my HHA?

Answer:

DADS **will not** conduct an initial Medicare certification survey until all Tier I and II survey activity is complete in addition to the completion of all Tier IV survey activity beyond Tier I and II surveys. The licensed-only HHA may refer to Questions 4 and 10 for an option for an initial Medicare certification survey for HHAs.

Question 8:

If a **non-deemed** Medicare-certified HHA wishes to relocate to a new location, 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 10 for an option for an initial Medicare certification survey for HHAs.

Question 9:

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

Answer:

Yes. A 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 10:

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 11:

My licensed-only HHA has chosen to use ACHC as our national AO for initial Medicare certification. How will this affect my HHA?

Answer:

ACHC is not approved through DADS to exempt HHAs from state licensing surveys in Texas. As a result, DADS will conduct licensure survey activity and any federal complaint investigations approved by CMS. ACHC will conduct the Medicare certification surveys.

Question 12:

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. And 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 13:

If a licensed-only HHA is ready for and has submitted DADS Form 2020 to the designated survey office, will DADS conduct an initial Medicare certification survey? Will DADS surveyors perform the initial Medicare certification survey while conducting the initial licensure survey?

Answer:

DADS surveyors will conduct **only** the initial licensure survey. DADS **will not** conduct an initial Medicare certification survey until all Tier I and II survey activity is complete in addition to the completion of all Tier IV survey activity beyond Tier I and II surveys. The licensed-only HHA may refer to Questions 4 and 10 for an option for an initial Medicare certification survey for HHAs.

Question 14:

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 the agency's compliance with state licensing regulations.

Question 15:

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 16:

Can a **non-deemed** 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:

A **non-deemed** parent Medicare-certified HHA may submit an application to DADS for an initial branch office license. DADS will process the application for a licensed-only HHA branch office license. An agency's application to request to add the licensed and certified home health services category to a branch office license will be processed **only** for the licensed-only category of services. A parent HHA's request to apply for Medicare-certification of a branch office or to add the category of Medicare-certified home health services at a branch location is a Tier IV activity and will not be conducted by DADS until all Tier I and II survey activity is complete, in addition to the completion of all Tier IV survey activity beyond Tier I and II surveys.

Question 17:

Can a **deemed** parent Medicare-certified HHA go through a CMS-approved national AO with deeming authority to seek a new Medicare-certified branch office?

Answer:

No. A **deemed** parent Medicare-certified HHA cannot go through its CMS-approved national AO to obtain certification for a new branch office. The addition of HHA branch locations are administrative actions and not a deeming option.

Question 18:

Can a **deemed** parent Medicare-certified HHA go through DADS to seek certification for a new branch office?

Answer:

No. A deemed parent Medicare-certified HHA is under the jurisdiction of its CMS-approved national AO.

Question 19:

Can a **deemed** parent Medicare-certified HHA go through DADS to seek certification for a new branch office if the agency dropped its accreditation and deemed status with the AO?

Answer:

No. Refer to Question 16.