



Medicare Surveys in Non-Long Term Care Facilities

Background

The Department of State Health Services (DSHS) conducts Medicare and Medicaid certification surveys in non long-term care facilities on behalf of the federal Center for Medicare and Medicaid Services (CMS). This includes hospitals, ambulatory surgical centers, and various other types of facilities. Once the certification is approved by CMS based on information submitted by DSHS, these facilities can bill Medicare and Medicaid Services.

On May 21, 2007, CMS directed DSHS' Division for Regulatory Services to cease conducting initial Medicare certification surveys until all higher priority work is completed. This creates a challenge for certain regulated entities because they may expend significant resources to construct and establish facilities prior to applying for a license and/or Medicare certification.

DSHS has received more than 25 requests for initial Medicare certification surveys that it cannot conduct because of the CMS guidance. The operating entities for facilities under construction are not required to inform DSHS prior to requesting a licensure or certification survey. DSHS has knowledge of approximately 100 facilities (hospitals and ambulatory surgical centers) that are under construction. There are other types of facilities under construction as well.

CMS Guidance

The essence of the CMS guidance is that all state agencies must complete all higher priority workload (validation surveys, complaint investigations and recertification surveys) before using federal funds to conduct Medicare initial surveys regardless of the date on which the facility's request was received. In the past, DSHS has managed workload by combining certification with other regulatory activities. Prior to the new guidance, CMS had not objected to that practice.

After receiving the guidance on prioritization of the use of federal funds from CMS, DSHS continued to conduct Medicare initial certifications using state resources. However, in a communication dated June 22, 2007, CMS said that a state agency with spending patterns on regulatory activities that do not conform to the new guidance on prioritization will incur a reduction of the federal award. At a subsequent meeting on July 17, CMS regional staff made clear that DSHS should not use state funds to conduct federal surveys. As a result, DSHS discontinued the use of state resources for Medicare initial certification surveys.

Facility Alternatives

CMS has stated that an initial survey may be approved in cases where a delay will hamper or restrict access to care. DSHS only forwards to CMS any information provided by a facility about access to care along with demographic data.

Hospitals and ambulatory surgical centers have the option of seeking accreditation through an independent survey process, and then requesting “deemed status,” which results in Medicare certification. However, some entities choose not to seek accreditation. Additionally, facility types that are Medicare certified only, such as Comprehensive Outpatient Rehabilitation Facilities (CORFs), Portable X-Ray Suppliers, Rehabilitation Agencies (outpatient physical therapy, outpatient speech-language pathology), and Rural Health Clinics (RHCs), cannot use the accreditation/deemed status option. Several facilities have chosen this route.

Another alternative is available to new facilities administratively attached to an already certified facility. In some cases, the new facility can become certified under the previously certified facility.

Federal Funding

A perception has developed that this problem resulted from a reduction in the federal grant that has already occurred. CMS reduced the award to DSHS for Fiscal Year 2007 for Medicare survey and certification compliance activities in response to Congressional budget action.

However, the principle obstacle to conducting Medicare certification remains the CMS guidance. The instruction to make Medicare certification the lowest priority for the use of federal funds, combined with the effective prohibition on employing state resources to manage the survey workload, has prevented DSHS from conducting timely surveys.

DSHS Response

Dr. Lakey was asked to testify in Washington, D.C., about pandemic influenza preparedness. He took that opportunity to talk to several Congressmen and members of their staff about this issue. A letter expressing concern about this guidance was signed by almost every member of the Texas delegation and sent to CMS.

- Immediately notify all facilities that seek licensure about the Medicare workload priorities, including the possibility that initial Medicare surveys may not be conducted in NLT facilities in Texas. This notice will occur through licensing packets, on the DSHS web page, and through associations. The notice will include information about the accreditation/deemed status option for hospitals and ambulatory surgical centers.
- Review the proposed FY08 budget to determine if Medicare salary costs will need to be reduced to have the requisite operating funds for Medicare activities.

Contact: Kathy Perkins, Assistant Commissioner for Regulatory Services, at (512) 834-6660, extension 3703 or kathy.perkins@dshs.state.tx.us.

ATTACHMENT

Non- Long Term (NLT) Health Care Facilities in Texas

Licensed Only

Birthing Centers

Abortion Clinics

Licensed and/or Medicare Certified

General Hospitals (includes Medicare designated Swing Bed and Critical Access (CAH))*

Psychiatric Hospitals

Ambulatory Surgical Centers*

End Stage Renal Disease

Medicare Certified Only

Portable X-Ray

Comprehensive Outpatient Rehabilitation Facility (CORF)

Outpatient Physical Therapy (OPT)

Rural Health Clinic (RHC)

*Have option of accreditation/Deemed Status to obtain Medicare Certification