Oklahoma State Department of Health
Creating a State of Health

June 5, 2007

Molly Crawshaw
Associate Regional Administrator
Division of Survey Certification
Centers for Medicare & Medicaid Services
Department of Health & Human Services
1301 Young Street, Room 833
Dallas, TX 75202

Re: CMS Mission and Priority Document (M+P)
Prioritization of Initial Medicare Certification Surveys

Dear Ms. Crawshaw:

Thank you for your letter of April 10, 2007 that underscores the M+P document instructions for Federal Fiscal Year 2007 (FFY07) categorizing initial Medicare certification surveys in the lowest priority tier of workload under our contract with CMS. In light of this letter, we have conducted a thorough review of our long term care and non-long term care survey and certification activities related to the contract.

We recognize that initial surveys have been considered a low priority for several years, and we have strived to meld the priorities established in the M+P document with the guidance found in the State Operations Manual (SOM) at 2008A:

> "When the provider/supplier notifies the SA of full operation, it documents the file with the date of notification. The SA conducts the survey within 90 calendar days of the date of notification of full operation, if possible."

Despite this somewhat disparate guidance, we have tried to satisfy both program requirements and use our scare resources efficiently and effectively to conduct as many initial surveys of new providers as possible within the 90 day window, when doing so would not appear to seriously impact our ability to complete our higher priority workload.

As a result of your letter and our analysis of the projected non-long term care survey workload in Oklahoma for the rest of FFY07, we do not anticipate being able to schedule any new Tier IV non-long term care survey activity through the end of the current FFY ending September 30, 2007.

In the normal course of our survey and certification work, we had accumulated fourteen complete applications, with CMS-855A approval by the fiscal intermediary, for new non-long term care providers by the time we received and had the opportunity to review and assimilate the information you provided in your recent letter. These potential providers had proceeded through the certification

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process in good faith with the expectation that they would be able to execute a Medicare Provider Agreement once their compliance was verified through a survey by the State Agency.

In the interest of fairness, we propose to work through this backlog of pending initials as our survey schedule permits. Occasionally, survey schedules are disrupted by unexpected outside events and surveyor resources are freed that would otherwise be underutilized if not applied to conducting these pending initial surveys. Assuming your office agrees to this proposal, and based on historical scheduling experience, we would estimate being able to complete at least some of these pending initial surveys by the end of calendar year 2007 while not otherwise delaying higher priority survey work.

Considering the M+P workload priorities for FFY08, the projected budget allocation, and our workload estimates, it appears to be highly unlikely we will have the resources to perform any Tier IV workload at all during the upcoming Federal fiscal year.

In light of this new information and our limited survey resources, we have begun informing individuals and groups inquiring about the process for becoming a new provider or supplier in the Medicare program in Oklahoma that it is unlikely we will be conducting any initial survey activity for new providers for the foreseeable future. As part of this education process, we are also informing interested parties of the potential to gain Medicare certification through the accreditation and deeming pathway when appropriate.

On the long term care side of this equation, since Oklahoma has in place an extensive certificate of need review process for new long term care beds, and since this review process will have already established the need for any new long term care providers requesting initial certification, we do not anticipate any change to our current process for conducting initial surveys for long term care.

As soon as we receive written notice from CMS Region VI that you are in agreement with the proposed workload priorities and plan as specified here, we will notify our provider communities of these changes to our survey and certification processes and post this correspondence on our website.

Please feel free to contact me if you have questions or I can provide any additional information. We appreciate your clarifications and look forward to your response.

Sincerely,

Henry F. Hartsell, Jr., Ph.D.
Deputy Commissioner
Protective Health Services

Cc: James M. Crutcher
Kevin Pipes
Rocky McElvany
Tom Welin

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
1301 Young Street, Room 833
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Division of Survey and Certification, Region VI

April 10, 2007

Mr. Henry F. Hartsell, Jr. Ph.D
Deputy Commissioner
Oklahoma Department of Health –Protective Health Services
1000 NE 10th Street
Oklahoma City, Oklahoma 73117-1299

Dear Dr. Hartsell:

This letter confirms our conversations about prioritization of initial Medicare certification surveys based on instructions in the fiscal year (FY) 2007 Centers for Medicare & Medicaid Services (CMS) Survey and Certification Mission and Priority Document (M+P). The M+P document includes a description of the four tier system (Tier I – Tier IV) CMS utilizes to define the frequency and priority for surveying all provider types within a fiscal year. The four tiers are listed in order of priority, with Tier I being those surveys that are statutorily mandated.

Tier I surveys specifically deal with the amount of months that should lapse between surveys for nursing home, home health agency and ICF/MR providers. Tier I also includes validation surveys performed for at least 1% of the state's accredited hospitals and the Nursing Home Oversight & Improvement Program (NHOIP). Tier II includes all complaint investigations and the surveying of a 10% targeted sample of end stage renal disease (ESRD) centers and a 5% sample of all remaining provider types which have been identified by CMS as facilities with the most risk of providing poor care. Tier III includes any additional surveys performed based on state judgment regarding the agencies that are most at risk of quality problems.

The M+P document makes initial surveys for all provider types (and additional surveys done beyond Tiers II and III) a Tier IV priority; with the exception of suppliers of ESRD services. Thus, initial surveys for all provider types must not be done with Federal funding unless all higher tier work will be accomplished in accordance with regulatory and statutory timeframes within the fiscal year.

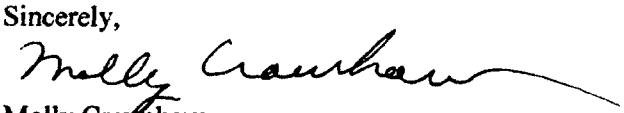
The M+P document also requires States to prioritize among Tier IV items and provides a variety of factors in setting those priorities. Specifically it states:

> "Such factors may include unprecedented state growth in specific provider type applicants without commensurate need, corroborated concerns in the state related to the Medicare or Medicaid program integrity, or unsustainable management or oversight of survey and certification activities in the state."

The CMS Regional Office expects the state survey agency to fully abide by this prioritization requirement and use the M+P document instructions to set priorities for scheduling and processing currently pending and future initial Medicare certification surveys for all provider types. These instructions apply to Medicare certification surveys and do not prohibit the State from conducting licensure only surveys.

If you have any questions, please contact Gerardo Ortiz at (214) 767-2084 or gerardo.ortiz@cms.hhs.gov.

Sincerely,



Molly Crawshaw
Associate Regional Administrator
Division of Survey Certification

Cc: Oklahoma Hospital Association
Oklahoma Association for Home Care
Oklahoma Association of Home Care Providers
Oklahoma Hospice & Palliative Care Association
Oklahoma Association of Homes and Services for the Aging