DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
1301 Young Street, Room 833
Dallas, Texas 75202

Division of Survey and Certification, Region VI

March 28, 2008

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

Re: Initial Medicare Certification Surveys

Dear Dr. Hartsell:

This is in response to your March 11, 2008 letter in which you requested clarification of the Medicare budgetary Tier priorities for initial certification surveys as they relate to providers who may be receiving licensure surveys. Specifically, hospice providers licensed in Oklahoma receive an additional onsite survey during the second six months of their first year of operation. You have requested clarification on the appropriateness of conducting an initial Medicare certification survey during this second licensure survey as the surveyors will be onsite anyway.

CMS Survey and Certification letter 08-03 (attached) clarified and reinforced the Tier priorities for initial certification surveys. The purpose of the four tier priority listing is to ensure that complaint investigations, recertifications, and other core work required for existing Medicare providers receives a higher priority than the work associated with certification of new providers. Hospices, because they have the ability to obtain Medicare certification through accreditation, are a Tier IV (lowest) priority.

While we understand the efficiency argument with regard to having surveyors already onsite performing a licensure investigation, there are some important distinctions to make. First, performing an initial Medicare certification survey (with or without a licensure survey conducted concurrently) draws monies down from the state's federal survey and certification allocation. These monies, again, should be spent in accordance with the Tier priorities. Further, once the provider is certified, the Medicare program is then liable for the costs of complaint investigations and recertification visits associated with their provider agreement.

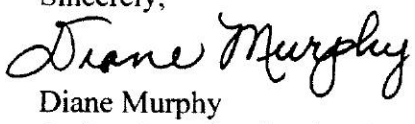
Hospice providers in geographic areas that have an actual need for this service do have the ability to request an access to care survey prioritization exception through the state and CMS regional office. The burden is on the provider to provide data and other evidence that effectively establishes the probability of serious, adverse beneficiary health care access consequences if the provider is not enrolled to participate in Medicare. With this as the standard for all other providers requesting initial certification, there is an equity concern in granting approval for initial Medicare certification surveys based solely on a unique aspect of a specific provider's state licensure requirements.

Finally, we note that Oklahoma already has a disproportionately large number of hospice agencies when compared to similarly-sized states. For example, Oklahoma has 140 Medicare-certified hospices, while Arkansas has 49 and New Mexico has 40. Texas, which generally has five-times the number of other provider types as Oklahoma, has 279 hospice agencies in the state.

Based on CMS national guidance regarding Tier priorities, federal resource limitations in Oklahoma, and the availability of accreditation or access to care exceptions for hospice providers in the state, we do not believe it is appropriate for the Oklahoma State Department of Health to conduct initial Medicare surveys of hospice providers during a licensure survey.

Please contact David Wright at (214) 767-6301 if you have any questions or need additional clarification.

Sincerely,



Diane Murphy
Acting Associate Regional Administrator