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New Medicare-Certified Provider? Not So Fast – New Providers Continue to be Lowest Priority for State Survey Agencies

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Over a year ago, CMS sent a letter to the State Survey Agency (SSA) Directors instructing them to reprioritize their Medicare survey activities due to continued budgetary constraints. In general, initial surveys for new Medicare-certified providers were assigned to the lowest tier (Tier 4) priority and, therefore, these providers could obtain an initial certification survey *only once* their respective SSA had completed its work for existing providers, including complaint investigations, recertifications and other core work.

Fast forward more than a year to today. The same budget constraints and resource limitations continue for CMS and SSAs and, therefore, new providers continue to experience long delays or even an inability to obtain an initial certification survey. Providers in this situation may want to consider other options, including deemed accreditation by an approved accreditation organization (AO) if such option is available for the particular provider type.

Under the Medicare program, certified providers are generally required to obtain an on-site survey from a federal or state surveyor as part of the enrollment process to ensure compliance with the Medicare conditions of participation and basic standards of quality. In its **November 5, 2007 letter to SSA Directors (Survey & Certification Letter)** CMS noted that while the federal budget for Medicare survey and certification had been drastically reduced for three consecutive years, the number of providers seeking to participate in the Medicare program was substantially increasing. Citing to the long-standing priority for surveying existing Medicare providers, CMS established a formal four-tier system, placing most new providers seeking certification in the lowest tier, Tier 4. CMS explained that many of these providers, including hospitals, home health agencies (HHAs) and ambulatory surgical centers (ASCs), have the option of becoming Medicare-certified on the basis of accreditation by CMS-approved AOs ("deemed accreditation" process) instead of a survey by CMS or a SSA. Other certified providers such as nursing facilities and rehabilitation agencies do not, however, have this same option.

In Appendix A to the 2007 Survey and Certification Letter, CMS established the following priorities for newly enrolling providers:

- **Tier 3:** ESRD facilities; Transplant centers; Hospitals without an AO

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Option, i.e., surveys for special psychiatric conditions of participation distinct part psychiatric or rehabilitation units in Critical Access Hospitals (CAHs) (Note: Where a hospital's operations would achieve certification through deemed accreditation by an AO, the Tier 3 priority status is only afforded to the non-deemed part. For example, no AO is approved for verification of the special psychiatric conditions of participation.)

- **Tier 4:** Provider with a deemed accreditation option (ASCs, HHAs, Hospices, Hospitals and CAHs); Comprehensive Outpatient Rehabilitation Facilities; Long-Term Care Units in Hospitals; Nursing Homes that do not participate in Medicaid (SNFs); Outpatient Physical Therapy and Rural Health Clinics (RHCs)

CMS permits providers to apply to their SSAs for an exception to the priority assignment if the lack of Medicare certification would cause significant access-to-care problems for beneficiaries serviced by the provider. Such exception must be approved by the CMS Regional Office, and CMS places the burden on the applicant to provide sufficient data and other evidence to establish the probability of serious, adverse consequences to beneficiary access if the provider or supplier is not enrolled in Medicare.

Following Congress' approval of additional funds, CMS issued a **subsequent letter on March 7, 2008**, modifying the initial tier assignments by providing SSA Directors with *discretion* to raise the priority status of initial certification surveys for RHCs and SNFs to Tier 3. CMS noted in this letter that most SNFs are dually-certified under Medicare and Medicaid, and Medicaid pays about half of the survey costs for dually-certified providers and, thus, the anticipated additional costs were minimal.

No other changes to these priority assignments have been made by CMS since the March 2008 letter and, therefore, initial surveys of new providers continue generally to be the lowest priority for SSAs.

Ober|Kaler's Comments: One component of a business plan to open a new facility should be to consider the implications of the tier assignment and explore with the respective SSA the feasibility of obtaining a timely initial certification survey. Providers that have the option of deemed accreditation should consider utilizing approved AOs to obtain Medicare enrollment. The deemed accreditation status, although more costly than a CMS or SSA survey, is likely to be the fastest route to certification, and possibly the only route to certification in some states with strained survey and certification resources.

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