Long-Term Care Regulation Provider Letter

Number: PL 2024-19 (Replaces PL 2011-01)
Title: What to Expect During Your Agency's Survey
Provider Types: Home and Community Support Services Agencies (HCSSA)
Date Issued: October 10, 2024

1.0 Subject and Purpose

This provider letter describes the Texas Health and Human Services Commission's (HHSC) survey process and explains HHSC's authority to survey. This written information will be provided each time the agency is surveyed.

2.0 Policy Details & Provider Responsibilities

The following information briefly describes HHSC's survey process and protocols for HCSSAs. Please refer to these protocols as you prepare for a survey. HHSC does not give prior notice to an agency of a survey. Upon arrival at the agency, the surveyor will present identification.

2.1 Entrance Conference

The surveyor will conduct an entrance conference with the agency's administrator or alternate administrator and other agency representatives in person or by telephone. For an initial survey, the administrator or alternate administrator must be present at the entrance conference. The surveyor will explain the purpose of the visit, identify any incidents or complaints to be investigated, describe the survey process, provide an estimated on-site time and provide an opportunity for attendees to ask questions. All attendees will be asked to sign the entrance conference attendance form.

Note: During the entrance conference for a licensed and certified (L&C) home health agency (HHA) the surveyor will begin to gather information from agency staff about its compliance with the highest priority standards called Level 1 standards. This process includes conducting interviews with clinical management staff and other appropriate staff to gather information about the agency's processes. For additional information on L&C HHA survey protocols refer to CMS Memo QSO-24-07-HHA: Revisions to Home Health Agencies (HHA) – Appendix B of the State Operations Manual.

2.2 Information Gathering and Review Process

1. If the agency is a licensed and certified home health agency, a minimum of seven client records will be reviewed depending on the unduplicated census for the past 12 months. If the agency is a Medicare-certified hospice, a minimum of 14 client records will be reviewed depending on the unduplicated census for the past 12 months.
2. If the agency provides only licensed home health and/or personal assistance services, a minimum of 10 client records will be reviewed. This review will include both active and discharged client records.
3. If the purpose of the visit is to investigate a complaint(s), the surveyor will review a sample number of clients. This review may include both active and discharged client records.
4. A minimum of three home visits will be conducted, depending on the number of clients served by a licensed and certified home health agency. On-site complaint investigations can also include home visits.
5. At a minimum, the following systems will be reviewed:
    - Administrative records;
    - Complaint tracking system;
    - Quality assurance plan and activities;
    - Policies and procedures;
    - Client records; and
    - Personnel files.

The information-gathering process is an organized, systematic and consistent process designed to enable surveyors to make decisions

concerning an agency's compliance with each of the regulatory requirements during a survey.

2.3 During the Survey

The surveyor will communicate openly with you throughout the survey. If you have questions during the survey, feel free to ask questions. You will be required to provide copies of agency record(s) and/or client record(s) as requested by the surveyor. The copies assist the surveyor and/or program manager in determining survey findings.

2.4 Exit Conference

The surveyor will conduct an on-site exit conference to discuss and provide the administrator or alternate administrator a list of the preliminary findings at the conclusion of the survey. Preliminary findings are subject to change prior to the issuance of the 2567 or 3724, but all concerns will be discussed during the exit conference. An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the surveyor during the exit conference and submits it within 2 working days of the exit date (Refer to 26 TAC §558.527(d)). If after the exit conference the surveyor identifies additional violations or deficiencies, the surveyor will return to the HCSSA and hold an additional face-to-face exit conference with the administrator or alternate administrator. All attendees will be asked to sign the exit conference attendance form.

HHSC encourages agencies to take a few minutes to complete a survey comment card to inform HHSC about survey visits. This feedback provides valuable information on the survey, staff and process and is kept confidential. To complete a comment card, visit this website: https://www.surveymonkey.com/r/2GV6F2K.

2.5 Statement of Deficiencies/Licensing Violations

The official notification of survey findings, documented on the Centers for Medicare and Medicaid Services (CMS) form, form CMS-2567, Statement of Deficiencies, and/or on HHSC Form 3724, Statement of Licensing Violations will be mailed, faxed, or e-mailed to your agency within 10 working days after the exit conference. For further guidance

on receiving an electronic version, review Provider Letter 2015-28, Receiving Survey Documents Electronically.

2.6 Plan of Correction

If HHSC cites a violation(s) and or deficiency(ies), your agency is required to submit a plan of correction (PoC). The PoC must include corrective measures and time frames with which the agency must comply to ensure correction of a violation(s) and/or deficieny(ies). You must submit an acceptable PoC for each violation(s) or deficiency(ies) to the appropriate HHSC regional HCSSA program manager no later than 10 calendar days after your receipt of the official written notification of the survey findings. **You must submit a PoC in response to an official written notification of survey findings that declares a violation(s) or deficiency(ies) even if the agency disagrees with the survey findings or intends to pursue an informal dispute resolution.**

HHSC has a web-based computer training course on writing "Acceptable Plans of Correction for HCSSAs" available to all agencies at: https://apps.hhs.texas.gov/business/CBT/correctionplans-hcssa/.

2.7 Informal Dispute Resolution (IDR) Process

If you disagree with a survey finding, you may submit an IDR request form and submit additional evidence to refute a violation(s) or condition-level deficiency(ies) to demonstrate compliance. Mail, fax, or email a complete IDR request form to the address, fax number, or email address listed below, which must be postmarked **within** 10 calendar days after the date of receipt of the official written notification of survey findings. In addition to the IDR request form it is also required to mail, email, or fax a rebuttal letter, with supporting documentation, to the address listed on the IDR request form and ensure receipt by the Community Supports and Integration Enforcement unit within seven calendar days after the postmark or fax date of the IDR request form. It is also required to mail or fax a copy of the IDR request form, and all the supporting documentation, to your agency's regional office location within the same time frames.

Health and Human Services Commission
Regulatory Services
Community Supports and Integration Enforcement Unit
Mail Code E-351
701 West 51st Street
P.O. Box 149030
Austin, Texas 78714-9030
Fax Number: 512-438-4138
Email: HHS_HCSSA_Informal_Dispute_Resolution@hhs.texas.gov

For additional directions regarding your IDR request, reference PL 2022-26, Enforcement Unit Mailbox for Informal Dispute Resolution. The IDR request form (HHSC Form 2407) is included in the PL and available on the HHSC forms website at https://www.hhs.texas.gov/regulations/forms/2000-2999/form-2407-informal-dispute-resolution-idr-request.

2.8 Agency Rights

You have a right to:

- An impartial survey based on HCSSA regulations relating to your agency's licensure categories.
- A surey process performed in a manner free of intimidation, coercion or harassment.
- A survey conducted by a trained professional knowledgeable in current home health, hospice and personal assistance services regulations and applicable operational issues.
- Openly discuss survey-related concerns with surveyors in a constructive manner without retribution or retaliation.
- Have all written IDR requests handled promptly and objectively.
- Have accurate survey results on file with HHSC in case of public disclosure requests.

2.9 Agency Responsibilities

Agency employees or the agency representative will:

- Comply with HCSSA rules and regulations.
- Conduct interactions with HHSC surveyors in a professional and courteous manner.

- Keep HHSC informed of changes in agency ownership, management or operations, in compliance with the agency's respective licensing regulations.
- Ensure prompt attention to surveyors' requests for clarification during the survey process.
- Provide timely access to surveyors' requests for survey documentation during the survey process.
- Stay current with policy information published on the HHSC website.

2.10 Surveyor Authority Policy

The following language from Texas Administrative Code (TAC), Title 26, Part 1, Chapter 558 applies to all licensed HCSSAs:

- By applying for or holding a license, an agency consents to entry and survey by a HHSC representative to verify compliance with Health and Safety Code Chapter 142 and Chapter 558 (§558.507(a)).
- An agency must ensure the required personnel are available to the surveyor during the entrance and exit conferences and available during the survey process (§558.523(a)-(g)).
- If an agency does not cooperate with a survey, HHSC may assess an administrative penalty without an opportunity to correct for a violation of 26 TAC §558.507 or may take enforcement action to deny, revoke, or suspend a license (§558.507(i)).
- If a surveyor arrives during regular business hours between 8:00 a.m. and 5:00 p.m. Monday through Friday and the agency is closed, an administrator, alternate administrator, or a designated agency representative is required to provide the surveyor entry into the agency within two hours after the surveyor's arrival at the agency (§558.523(e)).
- If an agency is closed during the agency's operating hours or between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, the administrator, alternate administrator, supervising nurse **or** alternate supervising nurse is required to: (1) post a notice in a visible location outside the agency that will provide information regarding how to contact the person in charge; and (2) leave a message on an answering machine or similar

electronic mechanism that will provide information regarding how to contact the person in charge (§558.210(c)).

- If a surveyor requests an agency record or client record that is stored at a location other than the survey site, an agency is required to provide the original record to the surveyor within eight working hours after the request (§558.507(c)).
- An agency is required to provide the surveyor access to all of its records required by HHSC to be maintained by or on behalf of an agency (§558.507(b)).
- An agency is required to provide the surveyor with copies of its records upon request (§558.507(d)).

The following language from Title 42 of the Code of Federal Regulations, Section §489.53, Termination by CMS, applies to all Medicare-certified HCSSAs:

" a) Basis for termination of agreement with any provider. CMS may terminate the agreement with any provider if CMS finds that any of the following failings is attributable to that provider:

(5) It refuses to permit examination of its fiscal or other records by, or on behalf of, CMS, as necessary, for verification of information furnished as a basis for payment under Medicare…

(13) It refuses to permit photocopying of any records or other information by, or on behalf of, CMS, as necessary, to determine or verify compliance with participation requirements."

3.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.