

# MEMORANDUM

Texas Department of Human Services \* Long Term Care/Policy

**TO:** LTC-R Regional Directors  
Section/Unit Managers

**FROM:** Marc Gold  
Section Manager  
Long Term Care-Policy  
State Office MC: W-519

**SUBJECT:** Regional Survey & Certification Letter #99-21

**DATE:** June 3, 1999

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The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 99-21 -- Home Health Agencies and the Formation of Separate Entities; Call Beverly Tucker, Section Manager, Professional Services, at (512) 438-2631.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Health Care Financing Administration**

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Region VI  
1301 Young Street, Room 833  
Dallas, Texas 75202

May 25, 1999

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 99-21

To: All State Survey Agencies (Action)  
All Title XIX Single State Agencies (Information)

Subject: Home Health Agencies and the Formation of Separate Entities

The purpose of this letter is to provide guidance in surveying organizations with separate entities. An organization may form and operate an entity that is separate from the Medicare-certified home health agency [HHA] to provide intermittent home care, personal care services, homemaker services, or private in-home nurse staffing.

The State Operations Manual [SOM] Section 2714.1 reads:

*The CoPs/Requirements apply to the entire certified provider/supplier and to all patients/residents being served by the certified entity, regardless of payor sources. This means that the surveyors may review the care of private pay patients/residents when surveying a Medicare/Medicaid certified provider or supplier. This policy is based on the premise that it is the provider or supplier that is being approved, not just the beds of or care provided to Medicare/Medicaid beneficiaries.*

*Of course, this policy does not apply to patients/residents residing in non-certified portions of facilities (e.g., the non-certified portions of SNFs that have only a portion of their beds Medicare-certified as a distinct part SNF; or the non-certified buildings on the campus of large institutions such as psychiatric hospitals or ICFs/MR).*

*In some cases it may not be immediately clear whether a division of the certified provider/supplier is covered by the certification. For example, an HHA may have a separate division in the organization that provides personal care attendant or homemaker services to private pay patients. Unless the agency can demonstrate that the separate division is operated as a separate entity. Unless the agency can demonstrate that the separate division is operated as a separate entity, the CoPs apply to all home health services provided by the entire HHA.*

Medicare approves an entity as an HHA and the Conditions of Participation apply to all individuals served by the approved HHA. When the HHA alleges separate entities, the surveyor should ask the HHA or its parent organization for information that will allow differentiation

between one or more entities. The following guidelines will assist the surveyors to determine when separate entities exist:

1. In States that license HHA, the State has licensed separately the Medicare certified HHA and the separate entity, or has licensed the separate entity as another type of provider or supplier.
2. The Medicare certified HHA and the separate entity are separately incorporated for tax and business purposes.
3. The Medicare certified HHA and the separate entity have different employer identification numbers for purposes of reporting employees' earnings to the Internal Revenue Service and the Social Security Administration.
4. The separate entity provides no services that the Medicare certified HHA intends to bill for under Medicare and Medicaid.
5. The Medicare certified HHA and the separate entity do not share care giving employees, facilities, office space, telephone lines, record keeping, computer time, etc.
6. The Administrative employees who share services between the Medicare certified HHA and the separate entity record time to both entities on a daily or weekly time sheets used to allocate time for Medicare cost reports.
7. The Medicare certified HHA and the separate entity have separate contracts when services are provided under arrangements.

The surveyor's responsibilities when he or she becomes aware of the existence or possible existence of separate entities include the following:

- The surveyor should explain to the organization or HHA alleging separate entities that in accordance with Federal laws and regulations, the Conditions of Participation apply to an HHA as an entity and to ALL individuals served by the entity. Further, that in view of Congressional intent that the Medicare Conditions of Participation apply to ALL individuals or patients under the HHA's care [1861(m), 1861(o)(3), and 1889(a)(1) of the Social Security Act {Act}] an HHA alleging separate entities must show through documentation that the separate treatment of its clients along the lines of those subject to Federal regulations versus those who are not, has legal validity.
- Also, that separate entities unlikely exist in situations where the alleged separate entity and the Medicare certified HHA share common space, facilities, employees, management, administration, and contracted services. The organization creating this separate entity should also be reminded that being exempt from regulations precludes the separate entity from having any of its services paid for under Medicare or Medicaid as HHA services.

- If the State agency determines, based on the information provided by the HHA or for other reasons, that the HHA does not have a separate entity or if the HHA or parent organization is unable or unwilling to provide such information, inform the HHA that:
  - A. It is in violation of the provisions of Section 1861(o) and 1891 of the Act that require compliance with the Conditions of Participation, particularly those that relate to clinical records and disclosure of ownership of the HHA.
  - B. It is in violation of its agreement with the Secretary under Section 1866 of the Act and the regulations related to this agreement [42 CFR 489.53(a)] because it has failed to provide information about ownership and information concerning clinical records.
  - C. It is in violation of Section 1128(b)(12)A) of the Act because it has denied access to records to determine compliance with the Conditions of Participation, and
  - D. It may be in violation of various requirements related to its Medicare cost reports that mandate information about ALL of the HHA's clients in order to properly pay Medicare costs and that the HHA's fiscal intermediary must be notified about the allegation of separate entities [see 42 CFR 413.5(b)(3), 413.9, 413.13(f)(2)(ii), 413.17, 413(d)(2)(3), 413.50(b), 413.53(a), and 413.80(d)].
  - E. The surveyor should inform the HHA that the State must report the alleged separate entity to the Regional Office that in turn must report this information to the fiscal intermediary.

The State agencies should report these separate entity situations to the Regional Office along with any recommendations the State has concerning the operation of two distinct entities. The State should also indicate whether the HHA refused access to records or information that make it impossible for the State Agency to make a determination concerning whether the Medicare certified HHA complies with the HHA Conditions of Participation.

If you have any questions about this matter, please call Dodjie B. Guioa of my staff at 214-767-6179.

Sincerely,

~Signature on File~

Molly Crawshaw, Chief  
Professional Health Advocacy and Analysis Branch