

# MEMORANDUM

## Department of Aging and Disability Services Regulatory Services Policy \* Survey and Certification Clarification

**TO:** Regulatory Services  
Regional Directors and State Office Managers

**FROM:** Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

**SUBJECT:** Authority to Obtain Copies (Replaces Home and Community Support Services Agencies (HCSSA) Transmittal Memo, September 21, 2001) – **S&CC #05-14**

**APPLIES TO:** HCSSA Program State and Regional Survey Staff

**DATE:** December 14, 2005

---

### **What gives the state survey agency authority to obtain copies while conducting a survey or investigation?**

The authority to obtain copies of documents while at an agency is found in state licensure regulations at 40 Texas Administrative Code (TAC) §97.501(a)(1)(5) and (6), and 40 TAC §97.601 (a).

For Medicare, the authority is found at 42 Code of Federal Regulations (CFR) §489.53: Termination by CMS.

### **When may DADS enter an agency's premises to conduct a survey or investigation?**

§97.601 (a)(1) indicates that representatives of DADS may enter at reasonable times during business hours, and at other times as it considers necessary to ensure compliance with statute and/or rules adopted under statute. See the attachment for further information on licensure and Medicare rules.

Please share this memorandum with your staff. If you have questions concerning this memorandum, please contact Mary Valente, Program Manager, Policy Development and Support, at (512) 438-2440.

[signature on file]

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

VLD:ca

Attachment

## DADS – Regulatory Services

### AGENCY RESPONSIBILITY AND SURVEYOR AUTHORITY

The Texas Department of Aging and Disability Services (DADS), or its authorized representatives, including surveyors, may enter the premises of a license applicant or license holder at reasonable times during business hours to conduct an on-site survey incidental to the issuance of a license. DADS may also enter at other times considered necessary to ensure compliance with statutes and rules adopted under statute, an order of the commissioner of the Department of Aging And Disability Services (commissioner) or the commissioner's designee, a court order granting injunctive relief, or other enforcement action as specified in 40 Texas Administrative Code (TAC) §97.501 (a)(1).

DADS or a representative of DADS is entitled to access to all books, records, or other documents maintained by or on behalf of the agency, to the extent necessary, to ensure compliance with the statute, this chapter, an order of the commissioner, a court order granting injunctive relief, or other enforcement action, as specified in 40 TAC §97.501 (a)(5). Nothing in the Health Insurance Portability and Accountability Act (HIPAA) privacy rules changes this requirement. Agencies are permitted to provide DADS access to protected health information because this access is required by law and because DADS is a health oversight agency conducting oversight activities. See 42 C.F.R. § 164.512(a)(1); (d)(1). Failure to grant access may result in a recommendation for enforcement action. DADS will maintain the confidentiality of agency records as applicable under federal or state law. Ensuring compliance includes permitting DADS surveyors to photocopy or provide surveyors with photocopies of any records or other information by or on behalf of DADS, as necessary, to determine or verify compliance with statute or this chapter.

By applying for or holding a license, the agency consents to entry and survey of the agency by DADS or a representative of DADS in accordance with the applicable statute and this chapter, 40 TAC §97.501 (a)(6). Under 40 TAC §97.601(a), DADS may deny, suspend, suspend on an emergency basis, or revoke a license issued to an applicant or agency if the applicant or agency:

- (1) fails to comply with any provision of the statute (Health and Safety Code chapter 142);
- (2) fails to comply with any provision of the chapter (40 TAC chapter 97).

For Medicare agencies, the following applies:

42 Code of Federal Regulations (CFR) §489.53: Termination by Centers for Medicare & Medicaid (CMS):

- (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.