

# MEMORANDUM

## Texas Department of Aging and Disability Services

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

**FROM:** Linda Lothringer, Unit Manager  
Policy, Rules and Curriculum Development Unit  
State Office MC E-370

**SUBJECT:** Regional Survey and Certification (RS&C) Letter No. 09-06

**DATE:** June 3, 2009

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The referenced Region VI Centers for Medicare and Medicaid Services (CMS), Regional Survey and Certification (RS&C) Letter was issued on May 29, 2009. This letter, which was distributed by e-mail on June 2nd, is being provided to you for information and action purposes and should be shared with all professional staff.

- RS&C Letter No. 09-06 – Making Photocopies of Provider/Supplier Documents During Survey

If you have any questions, please contact a policy program specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.

Attachment



**Division of Survey and Certification, Region VI**

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May 29, 2009

**REGIONAL SURVEY AND CERTIFICATION LETTER NO. 09-06**

**TO:** All State Survey Agencies (Action/Information)  
All Title XIX Single State Agencies (Action/Information)

**SUBJECT: Making Photocopies of Provider/Supplier Documents During Survey**

The purpose of this letter is to restate our expectation that surveyors should ensure that all documents specifically referenced or used to support deficiency citations be copied and retained in the survey packet.

This guidance applies to all surveys conducted in providers and suppliers. The surveys and subsequent documentation are an important part of any legal proceedings that may arise out of the certification process. The Principles of Documentation (POD) state that “the documentation of each and every survey should be treated as if it will be subject to close scrutiny. Any determination of compliance or non compliance must be based on objective, factual observations and not vague conclusions.”

When preparing for reconsideration and/or administrative hearings, the Dallas Regional Office will request the appropriate survey packet(s) and review provider/supplier documents referenced in the CMS-2567 to support and defend the State Agency citations. Recently, in the course of case reviews, we have determined that various records, including patient/resident/client records and policies are not consistently available for review. It appears that surveyors do not photocopy the relevant facility documents as referenced in the statement of deficiencies to support the findings.

The POD further states:

“The surveyor provides the reasons justifying any resulting enforcement action and the record on which to defend that action in the appeals process.”

“Obtain copies of the records, which show the deficient practice to prove the deficiency, and to show after-the-fact changes that may be made by the entity.”

To ensure that Regional Office and HHS Office of General Counsel staff have all the relevant information needed, we are requiring that State Agency surveyors make photocopies of relevant documents while onsite and include them in the survey packet. For example, if the survey team refers to a particular policy and procedure in the deficient practice, the expectation is that the survey team will make a copy of the referenced policy and procedure. The same holds true for

photocopies of resident/patient/client clinical records. This ensures both the integrity of documents leading to a citation as well as their availability for administrative review.

To demonstrate the importance of photocopying relevant documents during a survey we are attaching the following letter, Attachment A, that CMS sent to a provider in response to a Congressional inquiry. Because the surveyor made copies of the relevant documents referenced in the CMS 2567, we were able to show the evidence from the facility had been altered following the survey.

Should a provider/supplier object to the surveyor making of photocopies or scanning of relevant documents, inform them that refusal may result in termination of their Medicare agreement per 42 CFR §489.53(13).

These instructions are effective the date of this letter. Please distribute to all staff within 30 days. If you have any questions please call Susana Cruz at 214-767-4415.

Sincerely,

/s/

David R. Wright  
Associate Regional Administrator  
Division of Survey and Certification

Attachment

# Attachment A

January 10, 2001

Our Reference:

## Provider Info deleted

Dear Administrator:

<Content Deleted>

You have also submitted as Exhibit A, policies and procedures which you say contain further support for the fact that .....Hospital is not an emergency facility. However, we have noted a discrepancy between the policies and procedures attached to your letter of September 14, 2000, and the policies and procedures copied by the surveyor while onsite at your facility on June 15, 2000. Of specific concern is the fact that Policy/Procedure #200 for .....Hospital contains the same number (#200), as well as the same signatures, effective date (5/99) and approval date (10/5/1999). However, the content is different between the attachment included in your letter, and the copy obtained by the state surveyor. For example, Policy/Procedure #200 (attached), as submitted in your September 14, 2000 letter details the following:

- Admissions from other facilities  
Admissions from other facilities are dependent on bed availability.
- Walk Ins  
Memorial Hospital is not an emergency facility. Walk Ins shall be referred to St. Joseph's Emergency room for Consult Liaison.
- Referrals from physicians and Payor Sources  
Referrals from physicians and payor sources are dependent on bed availability. If an assessment has not been completed, admission staff shall complete an assessment to establish admission placement.

In contrast, Policy/Procedure #200 (attached), obtained by the state surveyor onsite at your facility on June 15, 2000 contain the following provisions:

- Emergency Admissions  
Emergency admissions are made and accepted at any time. Procedures may differ depending on the time of admission.
- Walk Ins  
Walk Ins are discouraged because Memorial Hospital is not an emergency facility. If an appointment can be scheduled, it will be made at this time or referral if needs cannot be serviced at Memorial. If an emergency, walk-in admission procedures will be followed.

## Attachment A

- Referrals from outside facilities  
Will be triaged and evaluated or acuity, appropriateness as needed.

Given conflicting versions of the same policy, our only recourse is to follow the policy obtained by the state surveyor while onsite at your facility. In order to resolve our understandable concerns about the validity of the second version of the policy, we have forwarded both versions to the Office of Inspector General for their review and possible action.

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Sincerely,

Calvin G. Cline  
Associate Regional Administrator  
Division of Medicaid and State Operations

CC: The Honorable ....., United States Senator  
(ATTN:.....)

Office of the Inspector General, Region VI

Department of Health