



Long-Term Care Regulatory Provider Letter (PL)

Number: PL 18-13 (HCSSAs)
Title: HCSSAs that Contract with Management Companies
Provider Types: Home and Community Support Services Agencies (HCSSAs)
Date Issued: July 17, 2018

1.0 Subject and Purpose

This provider letter explains requirements and provides clarification for Home and Community Support Services Agencies (HCSSAs) related to controlling persons, which include management companies.

2.0 Policy Details & Provider Responsibilities

The Health and Human Service Commission (HHSC) has received several questions regarding the role of management companies in a HCSSA. If a HCSSA contracts with a management company or other organization, the HCSSA must comply with all rules and regulations, specifically the requirements outlined below that relate to such a contract.

2.1 Notification to HHSC

Before issuing a HCSSA license, HHSC considers several factors, including the background of a controlling person or management company.¹ A HCSSA must report a change in a controlling person to HHSC within seven days after the change occurs.² An agency must use the HCSSA License Application to submit the written notice and pay the applicable fee.³

Medicare-certified Agencies

The Centers for Medicare & Medicaid Services (CMS) requires each Medicare-certified home health agency (HHA) and hospice agency to comply with requirements in Title 42, Code of Federal Regulations (CFR) [Part 420](#).

¹ See 40 TAC, [§97.11\(g\)\(2\)](#).

² See 40 TAC, [§97.218\(a\)](#).

³ See 40 TAC, [§97.208\(b\)\(3\)\(C\)](#) and [§97.218\(c\)](#).

Subpart C, regarding disclosure of ownership and control interests in such agency.⁴ A Medicare-certified HHA must also disclose to HHSC the name and business address of the corporation, association or other company that is responsible for the management of the agency.⁵

2.2 Administrator Responsibilities

A HCSSA administrator must supervise the implementation of agency policies and procedures, manage the daily operations of the agency, organize and direct the agency's ongoing functions and administratively supervise the provision of quality care to agency clients, among other responsibilities that are outlined in rule.⁶ The administrator must be an *individual* with specified qualifications designated by the HCSSA, who is responsible for the functions specified in rule for an administrator. In the administrator's absence, an alternate administrator designated by the HCSSA who also meets administrator qualifications must fulfill the administrator responsibilities.⁷ An administrator may not relinquish the administrator responsibilities to a management company or other organization.

Medicare-certified Agencies

In addition to complying with state licensure requirements, HCSSAs that are Medicare-certified agencies must also comply with the applicable Medicare Conditions of Participation for a home health agency (HHA CoPs) and for a hospice agency (hospice CoPs).⁸ The HHA CoPs require HHAs to assure that administrative and supervisory functions are not delegated to another agency or organization, and that all services not furnished directly by the HHA are monitored and controlled by the HHA.⁹ Under the hospice CoPs, a qualified administrator appointed by and reporting to the governing body is responsible for the day-to-day operation of the hospice, and must be a hospice employee who possesses the education and experience required by the hospice's governing body.¹⁰

⁴ See 42 CFR Part 418, [§418.116\(a\)](#) and Part 484, [§484.100\(a\)](#), for Medicare-certified hospice and home health agencies, respectively.

⁵ 42 CFR §484.100(a)(3).

⁶ See 40 TAC [§97.243\(b\)](#).

⁷ See 40 TAC [§97.243\(a\)](#) and (b) and [§97.244](#).

⁸ See 42 CFR Parts 484 for home health agencies and 42 CFR Part 418 for hospice agencies

⁹ 42 CFR §484.105.

¹⁰ 42 CFR [§418.100\(b\)](#).

2.3 Contracting with a Management Company

A HCSSA may not transfer control or delegate complete administrative oversight to a management company or other organization. However, HCSSAs may contract with a management company to perform certain administrative tasks (e.g. staff training or human resource management) that are not specified administrator responsibilities.

Medicare-certified Agencies

Under the new HHA CoPs that became effective in January 2018, CMS does not consider the use of payroll services, Outcome Assessment Information Set transmission contractors, and personnel training programs to be delegation of administrative and supervisory functions. Surveys will reflect this CMS interpretation pending official release of Interpretive Guidelines for inclusion in the State Operations Manual.

2.4 Enforcement Actions

HHSC may suspend or revoke a HCSSA license, including a licensed and certified home health services licensure category if the license holder, the controlling person, the affiliate, the administrator or the alternate administrator fails to comply with applicable HCSSA rules, including the requirement for a CMS-certified agency to comply with applicable Medicare CoPs.¹¹

3.0 Background/History

HHSC has statutory authority to adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person. A controlling person is an individual who has the ability to directly or indirectly influence, direct or cause the direction of the management, expenditure of money, or policies of a HCSSA or other person. A controlling person includes:

- a management company or other business entity that operates or contracts with others for the operation of an agency;
- a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and
- any other individual who, because of a personal, familial or other relationship with the owner, manager or provider of an agency, is in a position of actual control or authority with respect to the agency, without

¹¹ See 40 TAC [§97.601\(c\)](#). See also [§97.402\(a\)](#) and [§97.801\(d\)](#).

regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor or employee of the agency.¹²

HHSC has explicit statutory authority for its rules governing the duties and responsibilities of a HCSSA administrator, including the management of daily operations and supervision of the provision of quality care to agency clients.¹³

4.0 Forms/Appendices

None.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules and Training Section at (512) 438-3161.

[signature on file]

Mary T. Henderson
Associate Commissioner
Long-term Care Regulatory

MTH:sh

¹² See H&SC, [§142.0012](#) and 40 TAC [§97.2\(33\)](#).

¹³ See H&SC, [§142.012\(a\)](#).