



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 16-37-ALL

DATE: September 02, 2016
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: Office of Civil Rights (OCR) Clearance

Memorandum Summary

- The Centers for Medicare & Medicaid Services (CMS) worked collaboratively with the OCR to revise the OCR clearance process for new providers and Changes of Ownership (CHOW).
- The new process requires that providers successfully submit electronically an attestation of compliance with the civil rights requirements to the OCR before the State Survey Agencies (SA) and Regional Offices (RO) may process requests for initial surveys or CHOWs.
- Confirmation from OCR of successful submission of the attestation will meet the requirements for OCR clearance and eliminates the need for CMS ROs to issue provisional provider agreements.
- OCR will begin receiving electronic attestations on September 1, 2016.

Background

In order for a provider to participate in Medicare it must establish and maintain compliance with civil rights requirements. Currently, pursuant to State Operations Manual (SOM) 2010, the SA provides the required OCR Certification Information Request Packet to all applicants for certification and any certified provider undergoing a CHOW. The provider is asked to complete the forms within the packet and return them to the SA. The SA includes the forms within the Medicare package which is forwarded to the Regional Office (RO).

Upon receipt of the documents, the RO forwards the applicable forms to the OCR for processing and clearance. The OCR makes the determination of compliance and notifies CMS of its determination. If the RO does not receive OCR clearance within 20 calendar days of submission of the documents to OCR it may issue a restricted provider agreement with a contingency clause. The contingency clause states that if OCR subsequently issues a non-approval, the Medicare payment will be recouped as of the date the provider agreement was effective. Since the majority of compliance determinations from OCR are received significantly past the 20 calendar day mark, the provider is placed at financial risk for long periods of time and additional

workload may be created for SAs and ROs. To address these concerns, CMS has collaborated with OCR to implement a revised civil rights clearance procedure.

OCR Clearance Procedure

Medicare Part A providers will be required to sign an attestation of their compliance with all applicable civil rights laws enforced by OCR (including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 1557 of the Affordable Care Act). This attestation is referred to as an Assurance of Compliance and it can be found on the HHS website (Form HHS-690). New applicants for Medicare funding and current providers undergoing a CHOW will be responsible for submitting this attestation *electronically* to the OCR via OCR's online Assurance of Compliance portal at <https://ocrportal.hhs.gov/ocr/aoc/instruction.jsf>. The provider will receive electronic verification from OCR of successful submission of the attestation.

Pursuant to the new OCR clearance process, the SA should revise all new provider application materials to notify providers seeking initial certification and providers forwarding notification of a CHOW, that they must submit evidence of successful electronic submission of the above attestation (Form HHS-690) through the OCR portal before an initial survey may be conducted or the CHOW may be processed. The evidence of successful submission of the attestation should be forwarded to the RO as a part of the initial certification kit and recommendation. If the RO concurs with certification, a provider agreement may be issued without the need for a provisional status.

If the OCR receives complaints of discrimination subsequent to an initial certification or a CHOW, it may utilize any of its enforcement tools, including compliance reviews, technical assistance, new policy guidance and educational opportunities to assist an entity in coming into compliance with relevant civil rights laws. In the event the provider/supplier does not regain compliance, the OCR will notify the applicable CMS RO and termination of the provider agreement will be initiated.

OCR plans to use the current pre-clearance process for any applications they receive prior to August 31, 2016. They plan to complete all these reviews by October 1, 2016. Beginning September 1, 2016 OCR will begin receiving the Assurance of Compliance Form electronically through their portal.

Contact: For questions regarding this memorandum contact Peggye Wilkerson at Peggye.Wilkerson@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
David R. Wright

cc: Survey and Certification Regional Office Management