

REVISED HOME HEALTH AGENCY SURVEY AND CERTIFICATION ACTIVITIES RELATED TO A CHANGE OF OWNERSHIP

CMS recently issued guidance to the State Survey Agencies regarding changes to the survey procedures for Home Health Agencies (HHAs). Effective January 1, 2011, the Centers for Medicare & Medicaid Services (CMS) Home Health Prospective Payment System (PPS) final rule amended the regulations for certification activities related to HHAs. CMS's goal in implementing these changes is to ensure that a newly-sold HHA is in compliance with the applicable Conditions of Participation (CoPs).

Specifically, the revised policies affect the enrollment of HHAs that undergo a change of ownership (CHOW) (i) within three (3) years of their initial Medicare enrollment; or (ii) within three (3) years of a previous *change in majority ownership*. A change in majority ownership is a transaction in which the HHA experiences more than a fifty percent (50%) change in direct ownership by either an individual or an organization (i) during the thirty-six (36) months after the HHA's initial Medicare enrollment; or (ii) thirty-six (36) months after its most-recent change in majority ownership.

If an HHA is subject to the "36-month rule," then the provider agreement and Medicare billing privileges do not transfer to the new owner. Consequently, the new owner must obtain an initial survey from the State Survey Agency or a CMS-approved accreditation organization to participate in the Medicare program.

However, four (4) exceptions to the new requirements exist. The HHA is not subject to the new requirements: (1) the HHA has submitted two (2) consecutive years of full cost reports; (2) the HHA parent company is undergoing an internal corporate restructuring such as a merger or consolidation; (3) the owners of an existing HHA are changing the existing business structure but the owners remain the same; or (4) an individual owner of an HHA dies.

If you have questions or concerns regarding the foregoing or would like additional information, please contact your regular Hall Render attorney,

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