
CMS Manual System

Pub. 100-16 Medicare Managed Care

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal 84

Date: APRIL 25, 2007

SUBJECT: Revisions to Chapter 12-Effect of Change of Ownership

I. SUMMARY OF CHANGES: The changes made here are primarily clarifying or technical changes to the Change of Ownership chapter of the Medicare Managed Care Manual. Clause 8 in Exhibit 1-Model Novation Agreement, has been deleted.

NEW/REVISED MATERIAL - EFFECTIVE DATE*: April 25, 2007

IMPLEMENTATION DATE: April 25, 2007

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)
(R = REVISED, N = NEW, D = DELETED)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	12/10/Change of Ownership
R	12/10.1/What Constitutes a Change of Ownership
R	12/20/ 20.1/Notification Requirements Prior to an Anticipated Change of Ownership (CHOW)
R	12/20/20.4/Address for Sending Notifications to CMS
R	12/30/30.3/Acceptable Novation Agreements
R	12/30/30.3.1/Exhibit 1/ Model Novation Agreement

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2007 operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

*Unless otherwise specified, the effective date is the date of service

Medicare Managed Care Manual

Chapter 12 - Effect of Change of Ownership

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(Rev. 84, 04-25-07)

Transmittals for Chapter 12

30.3.1 Exhibit 1 - Model Novation Agreement

10 - Change of Ownership

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

If the legal entity that contracts with CMS has a change of ownership, the new entity may not necessarily qualify to continue the same Medicare managed care contract with CMS. This chapter outlines the effect of a change of ownership on a Medicare Advantage contract when the contract can be transferred to the new entity, the type of documentation required *for CMS review, and provides* a Model Novation Agreement that can be used by a contracting entity undergoing a change in ownership *which requires a novation of the CMS contract*. If you have any questions about *how* your managed care organization can fully meet these requirements, please contact your central office (CO) plan manager *at CMS in Baltimore*.

10.1 - What Constitutes a Change of Ownership

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

The following situations usually constitute a change of ownership:

- Asset sale or transfer – sale or transfer of title and property to another party (that party can be a related, affiliated or subsidiary entity or a non-related entity);
- Partnership - the removal, addition, or substitution of a partner (unless the partners agreed otherwise as permitted by applicable State law); or
- Corporation - the merger of the contracting corporate entity which holds the Medicare contract into another corporate entity; or the consolidation of the corporate entity which holds the Medicare contract with one or more other corporations, resulting in a new corporate body.

***NOTE:** In any type of change of ownership transaction, even those involving a parent corporation and a subsidiary or two affiliated entities, when the surviving entity of a merger or corporate reorganization or the transferee of an asset sale or transfer is an entity that is not an MAO, that entity should contact the Medicare Advantage Group's Division of Qualification and Plan Management (CMS central office) at the earliest possible point to determine if it may need to submit a modified application to be deemed an eligible MAO prior to the transaction/novation.*

The transfer of corporate stock or the merger of another corporation into the corporation that holds a contract with CMS does not ordinarily constitute a change of ownership.

20.1 - Notification Requirements Prior to an Anticipated Change of Ownership (CHOW)

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

All Medicare managed care contractors, including Health Care Prepayment Plans, cost-based plans, and Medicare Advantage organizations, which are considering a change of

ownership, MUST notify CMS at least 60 days prior to the anticipated effective date of change. *If the change of ownership transaction involves a Medicare Advantage Prescription Drug (MA-PD) plan, the organization must separately notify CMS' Medicare Drug Benefit Group in addition to the Central Office MA plan manager.*

20.4 - Address for Sending Notifications to CMS

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

All notifications to CMS required in §20.1, §20.3, and §30.1 (below) should be mailed to:

*Division of Qualifications and Plan Management,
Medicare Advantage Group
Center for Beneficiary Choices
Centers for Medicare and Medicaid Services
Mail Stop C4-2-04
7500 Security Boulevard
Baltimore, MD 21244-1850*

30.3 - Acceptable Novation Agreements

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

Exhibit 1 contains a Model Novation Agreement. This Agreement is intended to serve only as a guide in preparing a novation agreement. Contracting managed care organizations may need to revise the model, as necessary or appropriate, to conform to the circumstances of a particular transaction involving a change of ownership. In order to be accepted, the Novation Agreement must include the following:

- The new owner must assume all obligations under the Medicare managed care contract;
- The new entity must be an eligible organization;
- The entity's previous owner must waive its right to reimbursement for covered services furnished during the rest of the then current contract period;
- The previous owner must guarantee *for the remainder of the current contract year and, if the bid has already been submitted by the original owner, for the upcoming contract year*, that the new owner will carry out the terms of the contract; and
- The previous owners must agree to make its books and records and any other necessary information available to the new owner and to CMS in order to permit an accurate determination of costs for the final settlement of the contract period.

30.3.1 Exhibit 1 - Model Novation Agreement

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

(Name of Medicare Managed Care Plan or Medicare Advantage Organization being sold/merged) (Transferor), d.b.a. (Where applicable, the d.b.a. name), a corporation, partnership, sole proprietorship, etc., duly organized and existing under the laws of the State of (indicate the State under which the Transferor is formed or organized to operate) with its principal office in; (Name of owner) (Transferee), a corporation, partnership, sole proprietorship, etc. duly organized and existing under the laws of the state of, with its principal office in and the Centers for Medicare & Medicaid Services (CMS) enter into this Agreement:

(A) RECITALS:

(1) CMS has entered into certain contract(s) with the Transferor, namely:

(Indicate Medicare Managed Care Plan or Medicare Advantage Organization contract type)

(Indicate Medicare contract number/H#s)

The term "the contract(s)" as used in this Agreement, means the above contract(s) including all modifications, made between CMS and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed) and releases executed if CMS or the Transferor has any remaining rights, duties, or obligations under these contract(s). Included in the term "the contract(s)" are also all modifications made under the terms and conditions of these contract(s) between CMS and the Transferee, on or after the effective date of this Agreement.

(2) As of (date change of ownership is effective), the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a (indicate the type of transfer, i.e., a merger, corporate reorganization, or an agreement and purchase of the sale of assets) between the Transferor and the Transferee.

(3) The Transferee has assumed all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all the obligations of the Transferor under the contract(s) by virtue of the above transfer.

(5) The Transferee has indicated a desire to assume the obligations of the Transferor under the contract(s) and to fully perform all obligations that may exist under the contract(s).

(B) IN CONSIDERATION OF THESE FACTS THE PARTIES AGREE AS FOLLOWS:

(1) The Transferor confirms the transfer of the contract to the Transferee, and waives any claims and rights against CMS that it now has or may have in the future in connection with the contract(s).

(2) From and after the date of the change of ownership in § (A)(2), above, the Transferee agrees to be bound by and to perform all the duties and responsibilities of Transferor in each contract in accordance with the conditions contained in the contract(s). The Transferee also assumes all obligations and liabilities of, and all claims against the Transferor under the contract(s) incurred from and after the effective date of the change of ownership in §(A)(2), above.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract(s) with the same force and effect as if the action had been taken by the Transferee.

(4) CMS recognizes the Transferee as the Transferor's successor in interest in and to the contracts. From and after the date of the change of ownership the Transferee by this Agreement becomes entitled to all rights, title, and interests of the Transferor in and to the contract(s). Following the effective date of this Agreement, the terms "Organization" and "Contractor" as used in the contract(s) shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of CMS against the Transferor. Notwithstanding any other provision of this Agreement, Transferor remains liable for all acts constituting a breach of the contract(s) occurring or arising before the effective date of the change of ownership, to the fullest extent of applicable laws and regulations.

(6) All payments and reimbursements previously made by CMS to the Transferor shall be considered to have discharged CMS's obligations under the contract(s). All payments and reimbursements made by CMS after the effective date of this Agreement in the name of or to the Transferee, shall have the same force and effect as if made to the Transferor, and shall constitute a complete discharge of CMS's obligations under the contract(s) to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that CMS is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from this Agreement other than those that CMS in the absence of this Agreement would have been obligated to pay or reimburse under the terms of the contract(s).

(8) The contract(s) shall remain in full force and effect except as modified by this Agreement. Each party has executed this Agreement which is effective as of the date signed below by the Centers for Medicare & Medicaid Services.

(9) Each party certifies and warrants that it has full power and authority to enter into this Agreement.

(10) Each person executing this Agreement on behalf of a party certifies and warrants that he or she is authorized to enter into this Agreement on behalf of such party.

Centers for Medicare & Medicaid Services

By _____ Date _____

Director, *Medicare Advantage* Group

Centers for Medicare & Medicaid Services

(Name of Transferee)

By _____ Date _____

Title _____

(Name of Transferor)

By _____ Date _____

Title _____