DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop 02-02-38
Baltimore, Maryland 21244-1850

Office of Clinical Standards and Quality/ Survey & Certification Group

Ref: S&C: 12-14-HHA

DATE: **December 23, 2011**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Home Health Survey and Certification Activities Related to Program Safeguards: Change of Ownership

Memorandum Summary

Required Survey Activity as a Result of Certain Home Health Change in Ownership Transactions (CHOW): The Home Health Prospective Payment System (PPS) final rule, Centers for Medicare & Medicaid Services (CMS) 1510-F, amended the regulations for home health agency (HHA) certification. HHAs that undergo a change in **majority ownership** within three years of initial Medicare enrollment or within three years of a previous change in majority ownership must enroll in the Medicare program as a new HHA, and obtain a new State survey or deemed status accreditation. This is necessary to ensure that newly-sold HHAs are in compliance with the Conditions of Participation (CoPs). This rule also provides four allowable exceptions to the 36-month ownership provisions.

Background Policy

Home Health PPS rule CMS 1510-F revised certain policies related to the transfer of HHA provider agreements at §424.550(b)(1), defined "change in" majority ownership per §424.502, and provided several exceptions to the "36-month rule." Effective January 1, 2011, and in accordance with §424.550(b)(1), if there is a change in majority ownership of an HHA by sale (including asset sales, stock transfers, mergers, and consolidations) within 36 months after the effective date of the HHA's initial enrollment in Medicare or within 36 months after the HHA's most recent change in majority ownership, the provider agreement and Medicare billing privileges do **not** convey to the new owner.

Section §424.502 defines the term "Change in Majority Ownership" as a transaction in which an individual or organization acquires more than a 50 percent direct ownership interest in an HHA during the 36 months following the HHA's initial enrollment into the Medicare program or the 36 months following the HHA's most recent change in majority ownership (including asset sales, stock transfers, mergers, and consolidations). This includes an individual or organization that

acquires majority ownership in an HHA through the cumulative effect of asset sales, stock transfers, consolidations, or mergers during the 36-month period after Medicare billing privileges are conveyed or the 36-month period following the HHA's most recent change in majority ownership.

Discussion

If the Regional Office (RO) or State Survey Agency (SA) receives an inquiry from the provider regarding procedures for a change in majority ownership pursuant to §424.550(b) (1), it should refer the provider to its Regional Home Health Intermediary (RHHI) or Medicare Administrative Contractor (MAC). The RHHI/MAC will review the applicable time frames, exceptions and any other pertinent enrollment requirements, and will determine if the facility has had a majority ownership change within 36 months of its initial certification or within 36 months of another majority ownership change.

If the proposed HHA change of ownership meets the revised HHA change in majority ownership definition, it must:

- Enroll in the Medicare program as a new (initial) HHA under the provisions of §424.510;
- Obtain a State survey or an accreditation from an approved accreditation organization with deeming authority; and
- Sign a new Medicare provider agreement and receive a newly assigned CMS Certification Number (CCN).

CMS will deactivate the HHA's Medicare billing number if the sale has already occurred.

Scheduling of an initial survey is initiated by a recommendation from the RHHI/MAC to the RO/SA. The SAs and ROs will follow the current established processes and policies for initial certification. The initial surveys required per the change in majority ownership guidelines will be considered Tier IV per the Mission Priority Document (MPD). The HHA may utilize an approved Accrediting Organization (AO) for an initial survey. It is the responsibility of the HHA to arrange the initial Medicare survey with the AO.

Upon successful completion of the enrollment and survey process, the new HHA will have *a new effective date of Medicare participation and a new CCN.*

Questions from the provider community about the definitions for a change in majority ownership, specifics regarding participation dates, exceptions, etc. should be directed to the applicable RHHI/MAC.

An existing HHA that engaged in a transaction that meets the revised HHA change in majority ownership definitions is considered to have voluntarily terminated the original provider agreement. The requirements for a provider/supplier to terminate **voluntarily** from participation in the Medicare program are set forth at §489.52. The RO should follow the usual procedure regarding voluntary termination, using the date of the ownership change as determined by the RHHI/MAC as the effective date of voluntary termination.

There are a four allowable exceptions at §424.550(b)(2). Specifically, the provisions of §424.550(b)(1) do not apply if:

- The HHA submitted two consecutive years of full cost reports;
- The HHA parent company is undergoing an internal corporate restructuring, such as a merger or consolidation;
- The owners of an existing HHA are changing the HHA's existing business structure and the owners remain the same; or
- An individual owner of an HHA dies.

Note: §424.550(b)(1) does not apply to "indirect" changes in majority ownership (e.g., changes to the ownership of a holding company that owns and operates HHAs through subsidiaries).

Effective Date: This guidance is effective immediately. Please ensure that all home health survey, certification, and enforcement staff, their managers, and State/RO training coordinators are fully informed within 30 days of the date of this memorandum.

References

CMS-1510-F was published in the Federal Register November 2, 2010.
http://edocket.access.gpo.gov/2010/pdf/2010-27778.pdf
Effective Date: January 1, 2011

Medicare Program Integrity Manual, Pub. 100-08, Chapter 15.
http://www.cms.gov/manuals/downloads/pim83c15.pdf

MLN Matters Number: MM7256
http://www.cms.gov/MLNMattersArticles/downloads/MM7256.pdf

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management
Provider Enrollment Operations Group