

HOME HEALTH AND HOSPICE NEWS

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CMS ISSUES TWO SURVEY AND CERTIFICATION LETTERS ADDRESSING CHOWS AND BRANCH OFFICES.

On April 25, 2007 the Texas Department of Aging and Disability Services ("DADS") published two letters from the Centers for Medicare and Medicaid Services Regional Office IV ("CMS RO") addressing Medicare determinations of changes of ownership ("CHOWs"), and procedures for obtaining home health agency ("HHA") branch office certification.

CHOWS

CMS Regional Survey and Certification ("RS&C") Letter No. 07-04, clarifies the standards that should be used by State survey agencies when interpreting the Medicare regulation on CHOWs and their effect on the Medicare Provider Agreement. 42 CFR §489.18.

Specifically, CMS explains that, when a State license is transferred by any means to another operator, the Medicare Provider Agreement and Certification Number (formerly known as the "provider number") are not automatically transferred or assigned to the new operator. This is true even if the transfer documents (bill of sale, asset or stock sale agreement, etc.) expressly state that the Medicare Provider Agreement and Certification Number do transfer.

For the Provider Agreement and Certification Number to transfer to the new owner, the CMS RO must make a determination that a CHOW has in fact occurred, and that the new operator is licensed and otherwise entitled to accept the transfer. When a CHOW is anticipated, both the buyer and seller have obligations to report the transaction and to complete and submit the relevant portions of the Medicare enrollment form (CMS-855A) to their fiscal intermediary ("FI"). The FI verifies the information in the 855A and forwards it to the State Survey Agency ("SSA"), which reviews the documents under the Medicare CHOW rules, and makes a recommendation to the RO. It is important to note that CMS does not necessarily apply the same CHOW standards for certification purposes as DADS does for licensure purposes. For example, DADS considers the transfer of 50 percent or more of the stock in a provider to constitute a CHOW, whereas CMS does not consider stock transfers to be CHOWs. If CMS determines that a CHOW has occurred, it updates its databases and notifies the new

owner, and the transfer of the Provider Agreement and Certification number will be acknowledged through a "tie-in notice."

Where there has been a gap in services (the seller ceases to provide services before the buyer begins providing services out of the same location), the transaction is not considered a CHOW but a voluntary termination by the seller and a new certification request by the buyer. In addition, even if no CHOW has occurred, providers are obligated to report certain changes in their ownership or management structure to DADS, CMS, and Medicaid, if applicable.

HHA BRANCH OFFICE CERTIFICATION

CMS outlines, in RS&C Letter 07-05, the procedures for obtaining Medicare certification of an HHA branch office. Before any certification evaluation is undertaken by CMS, the branch office must be licensed by DADS as a branch office of a licensed and certified HHA. That process involves completing and submitting a branch office application form to DADS. The HHA should also complete and submit to the FI a CMS Form-855A, to add the branch office location.

The provider must then complete and submit to the DADS licensing division DADS' Form 2023 (available online), entitled "Medicare Certification Questionnaire." This document is a 12-page, 46 question application that essentially covers all aspects of the Medicare conditions of participation for a HHA and branch office, and which asks the provider to specifically address issues relating to location organization and structure, daily supervision by the parent of services furnished out of the branch office, shared and "under arrangements" services, and other matters.

If approved by DADS, the information is forwarded to the CMS RO with a recommendation to approve or deny the branch office certification. The RO makes the final determination regarding Medicare certification, but "relies on State agencies to recommend approval or denial."

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