

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: LTC-R Regional Directors
Section/Unit Managers

FROM: Marc Gold
Section Manager
Long Term Care-Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #99-07

DATE: January 20, 1999

The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 99-07 -- Treatment of Underpayments and Overpayments in Change of Ownership Situations; Call Joe Armstrong, Applications & Issuance Unit Manager, at (512) 438-2304.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Region VI
1301 Young Street, Room 833
Dallas, Texas 75202

January 20, 1999

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 99-07

To: All State Survey Agencies (Action)
All Title XIX Single State Agencies (Information)

Subject: Treatment of Underpayments and Overpayments in Change of Ownership Situations

The purpose of this letter is to clarify that the State Operations Manual (SOM) sections 3210 E. and 3210 B.1., are intended to include overpayments as well as underpayments, as being a part of the "assignment" when, as a result of a change of ownership (CHOW) under 42 CFR 489.18, a provider agreement is assigned to a new owner. Refer also to U.S. v. Vernon Home Health Inc., 21 f.3d 693 (5th Cir. 1994) (Vernon). Some regional offices, fiscal intermediaries, and providers continue to believe (even after the Vernon decision) that the Health Care Financing Administration (HCFA) still wishes to attempt to recover an outstanding overpayment from the old owner. This is not the case.

In accordance with the decision in Vernon, we believe that in accordance with the regulations, all liabilities, including overpayments, of the old owner should be transferred to the new owner when the new owner accepts assignment of the provider agreement. The judge in the Vernon case recognized that the new owner could have chosen not to accept assignment of the provider agreement. But since the new owner accepted assignment of the provider agreement it is agreed to accept the terms of the regulatory scheme. Thus in accordance with the regulations, the court reasoned that the new owner is liable for the overpayments.

We believe that in accordance with the foregoing, it is also appropriate that underpayments, if there are any, go to the new owner in assigned agreement cases because, as recognized by the court in Vernon, the new owner has assumed the agreement. Also, while the new and old owners may have their own private party contracts or agreements regarding who is responsible for what, HCFA is not bound by these when deciding which owner should repay an overpayment or receive an underpayment. The assignment or non-assignment of the agreement is the controlling factor for HCFA in these matters.

The contents of this letter will be incorporated in the SOM at the time of the next SOM revision relating to CHOWs. If you have any questions, please contact Jann Caldwell, of my staff, at (214) 767-4401.

Sincerely,

~Signature on File~

Calvin Cline, Chief
Survey and Certification Operations Branch