

MEMORANDUM

Texas Department of Aging and Disability Services

TO: Regulatory Services Division
Regional Directors and State Office Managers

FROM: Michelle Dionne-Vahalik, Manager
Policy, Rules, & Curriculum Development
State Office MC E-370

SUBJECT: Regional Survey and Certification (RS&C) Letter No. 07-04

DATE: April 25, 2007

The attached Centers for Medicare and Medicaid Services (CMS), Regional Survey and Certification (RS&C) Letter was issued on April 18, 2007. This letter, which was distributed by e-mail on April 19th, is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 07-04 – **Change of Ownership (CHOW) Determinations for Medicare Providers**

If you have any questions, please contact the Licensing and Credentialing Section at (512) 438-2630.

Attachment



Division of Survey and Certification, Region VI

March 27, 2007

Regional Survey and Certification Letter No. 07-04

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

Subject: Change of Ownership (CHOW) Determinations for Medicare Providers

Our Regional Office (RO) continues to be made aware of inconsistencies in the way State survey agencies are interpreting 42 CFR 489.18 for various business transactions that occur with Medicare providers. Specifically, we have identified the following problem:

Problem: When a State license is transferred to a new operator it is perceived that the Medicare provider agreement and CMS Certification number (CCN) are automatically assigned to the new operating entity. **(Effective March 2, 2007, the Medicare/Medicaid Provider Number has been renamed the Centers for Medicare & Medicaid Services (CMS) Certification Number (CCN))**

Clarification: A State licensing CHOW decision based on an analysis under a State's criteria is not necessarily relevant to a Medicare CHOW determination. The Medicare CHOW determination must be determined exclusively by Medicare regulations and policies.

The provider agreement and CCN is not the "property" of any individual or business entity and cannot be sold or given to another entity for use. CMS determines whether an organization's business transaction constitutes a CHOW under Medicare regulations and acknowledges whether the provider agreement is transferred to a new owner of a participating provider, unless the new owner rejects assignment of the provider agreement. The CCN previously assigned to the provider stays with the provider, regardless of which legal entity is the owner. A new CCN is not assigned based on a CHOW.

Automatic assignment of the Medicare provider agreement occurs when the Medicare provider undergoes a CHOW transaction as described in 42 CFR 489.18 (sale, merger, lease, incorporation, partnership). There can be no transfer of the Medicare provider agreement if there is no functioning business entity in existence. If a Medicare provider ceases operations, it no longer meets the definition of any provider type and may be considered a voluntary termination in accordance with 42 CFR 489.52 (3). Therefore, if a Medicare provider ceases to provide services anytime prior to a new operating entity beginning operations at the same location, then the new operating entity should request initial Medicare certification and undergo the initial certification process to obtain its own agreement with the Secretary and CCN.

CHOW Process: A Medicare provider contemplating a CHOW, along with the new owner, should notify CMS by completing and submitting CMS-855A forms through their fiscal intermediary with supporting legal documents which detail their business transaction (e.g. bill of sale, merger documents, lease agreements, operations transfer, etc.). After the fiscal intermediary has completed its review of the application, and if no additional information is needed and there is no reason to issue a denial, the fiscal intermediary notifies the State survey agency of its verification of information on the 855A form within 30 calendar days of receipt of the 855-A form. The State survey agency (SSA) will review the transaction documents in accordance with guidance in §3210 of the State Operations Manual (SOM) in order to make

a recommendation to the Regional Office (RO) whether a CHOW has or has not occurred with the Medicare provider. Once the RO receives a complete CHOW application packet they will review the packet and make a determination as to whether a CHOW has occurred.

A Medicare provider's business entity undergoing a stock transfer, receivership, or State authorized conversion does not constitute a CHOW under Federal regulations. However, the provider must notify CMS by submitting an 855A change of information application through their fiscal intermediary for the updated ownership control information.

If the RO determines a CHOW did or did not occur, the ASPEN database will be updated according to the following instructions:

1. The RO determines a CHOW did occur. The SSA will update the ASPEN database with the new owner's information.
2. The RO determines the provider underwent a stock transfer or receivership. The ASPEN database information will remain unchanged.
3. The RO determines the provider underwent a conversion that did not constitute a CHOW under Medicare regulations. The SSA will update the ASPEN database with the converted entity's information.
4. The RO determines a CHOW did not occur, however, a new operating entity wishes to participate at the same location of the old provider. The SSA should consult with the RO as to whether the old provider has ceased operations or fails to meet requirements for Medicare participation.

It should be noted that there may be revisions to the regulations in the near future; however, until then, SSAs should continue to refer to §§ 2005E and 3210 of the State Operations Manual (SOM) for guidance in providing information to participating providers contemplating CHOWs.

If you have any additional questions, please call Connie Jones at (214) 767-6213 (for Long Term Care providers), Rachel McCarty, (214) 767-2082 (for ESRD providers), Sheryl Barrett-Bowie (214) 767-0285 (for OPT, CORF, ASC, CMHC providers), Jann Caldwell (214) 767-4401 (for Home Health, Rural Health and Hospice providers), and Colleen Sanders (214) 767-4412 (for Hospitals providers).

Sincerely,

Molly Crawshaw,
Associate Regional Administrator
Division of Survey and Certification