Health Care Regulation and Quality Improvement
800 NE Oregon Street, Suite 465
Portland, Oregon 97232
971-673-0540
971-673-0556 (Fax)

This letter is in response to a notification of a change of ownership of the home health agency (HHA). The Health Care Regulation and Quality Improvement Section of the Oregon Health Authority is responsible for state licensure of HHAs, and under an agreement with the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services (CMS), is also responsible for Medicare certification of HHAs.

Effective 12/18/09, an HHA may not undergo a change of ownership if the effective date of said change occurs within 36 months after: (1) the effective date of the provider's enrollment in Medicare, or (2) the effective date of the last ownership change for the HHA. The provider must instead enroll as a new HHA, undergo a survey, and sign a new provider agreement.

This is a link to the Oregon Administrative Rules for HHAs: www.healthoregon.org/hflc Owners of a HHA must ensure that the agency is in compliance with these state rules in order to maintain its license to operate in the State of Oregon.

This is a link to the Federal regulations for HHAs, called Conditions of Participation: http://cms.hhs.gov/manuals/Downloads/som107ap_b_hha.pdf, including the Interpretive Guidance. Owners of a HHA must ensure that the agency is operated in compliance with these regulations if they desire continued Medicare certification. Medicare certification enables a HHA to receive reimbursement with Medicare monies for services provided to Medicare beneficiaries.
Upon admission, the patient has the right to be advised of the availability of the toll-free HHA hotline in the state. Oregon's HHA toll free number is 1-800-542-5186. When the agency accepts the patient for treatment of care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of operation (M-F, 8:00am-5:00pm), and that the purpose of the hotline is to receive complaints or questions about local HHAs. The patient also has the right to use this hotline to lodge complaints concerning the implementation of the advanced directive requirements.

Should the new owners desire continued state licensure and Medicare certification, they must return the following forms and documents to this office:

1. **Oregon State HHA License Application form, including the applicable licensing fee. www.healthoregon.org/hflc**
2. **CMS 1561 http://www.cms.hhs.gov/cmsforms/downloads/cms1561.pdf**
3. **HHS 690 - Assurance of Compliance with Title VI of the Civil Rights Act (two signed original copies required) and a Civil Rights packet http://www.hhs.gov/forms/HHS690.pdf & http://www.hhs.gov/ocr/civilrights/resources/providers/medicare_providers/formstobecompleted.html**
4. **CMS 1572(a) and (b) - Home Health Agency Survey and Deficiency Report http://www.cms.hhs.gov/cmsforms/downloads/cms1572a.pdf**
5. **CMS 855 - Please Contact Your FI.**
6. **Statement of acceptance/refusal of previous owners Medicare provider agreement and number**
7. **Letter of notification from both buyer and seller.**

Regarding the License application form: The completion of the state HHA License Application form by the new owners is required to process the change of ownership for state licensing purposes. The licensure fee for a change of ownership of a HHA is $1,250.00. A new HHA license which reflects the change of ownership will be generated and sent to the agency. In addition, effective April 1, 2012 If an owner or administrator will have direct contact with a patient, the owner or administrator must submit background information to the Division, in accordance with OAR 333-027-0064 for the purposes of conducting a criminal records check.

The remaining forms and documents are required to process the change of ownership for Medicare certification purposes.

Regarding the HHS 690: Title VI of the Civil Rights Act of 1964 prohibits discrimination on grounds of race, color, or national origin in any program receiving Federal financial assistance; and age discrimination is prohibited under provision of the Age Discrimination Act of 1975. As stated above, enclosed is a Civil Rights packet, which includes forms and information materials. The new owners must respond, as requested, to the Office for Civil Rights. The form is available at https://www.hhs.gov/sites/default/files/form-hhs690.pdf and can be submitted by mail or at the US DHHS Assurance of Compliance online portal at https://ocrportal.hhs.gov/ocr/aoc/instruction.jsf.

Regarding the Intermediary Preference: The fiscal intermediary (FI) is the

insurance company, which, under an agreement with CMS, reimburses health care facilities with federal Medicare monies. The CMS designated FI for HHAs in Oregon is National Government Services.

Regarding the CMS 855: Provider/Supplier Enrollment Form will need to be obtained from National Government Services. If you have any questions relative to the completion of the CMS 855 please call National Government Services at (866) 590-6724. Mail the CMS 855 directly to National Government Services and provide a copy to this office.

Regarding the statement of acceptance/refusal of the previous owner's provider agreement and number: The courts have upheld CMS's right to hold new owners responsible for the overpayment of the old owners based on regulations at 42 CFR 489.18. CMS has the right to recoup from the buyer even when a sales agreement specifically states that the buyer will not accept the liability of the seller. The enclosed chart has been prepared to outline the effect of accepting or not accepting the assignment of an existing Medicare provider agreement. Please be advised of the related risks and benefits. **Enclose a written, signed statement which indicates whether the new owners will be accepting or refusing the previous owner's provider agreement.**

After you have obtained and/or completed all of the required documents and forms, return them to this office, with the exception of the original CMS 855, with a cover letter reflecting the change of ownership and the effective date.

Please identify in the letter any other applicable changes such as [change from a hospital based HHA to a freestanding HHA], change in administrator or director of professional services, etc. We will process the documents and forms in accordance with licensing and certification requirements.
Return the CMS 855 to NGS, and all other documents to this office.

Once it is determined that all requirements of Medicare and Civil Rights are met, you will receive written notification from CMS that the agency's continued Medicare certification under the new ownership has been approved.

Those institutions and agencies, which are denied Medicare certification will be notified and given the reasons for the denial and information about their rights to

appeal the decision. If operation of the agency is later transferred to another owner, ownership group or to a lessee, this office must be notified. Medicare certification also enables a HHA to bill the state Medicaid program for services. If the agency receives reimbursement for services provided to Medicaid clients, it must notify the provider enrollment department of the State of Oregon Department of Medical Assistance Programs (DMAP) of the change of ownership. The telephone number is 1-800-422-5047. A representative from that office will inform the HHA of the applicable requirements and procedures related to the change of ownership.

As long as the HHA is licensed and/or certified, subsequent, surveys will be conducted to evaluate its continued compliance with the regulations. Please do not hesitate to call this office at 971-673-0540 if you have any questions.

Sincerely,

Client Care Surveyor
CMS Representative
Oregon Health Authority
Public Health Division
Health Care Regulation and Quality Improvement

If you need this document in an alternative format,
please call our office at 971-673-0540 or TTY 711.

MEDICARE PROVIDER AGREEMENTS AND CHANGES OF OWNERSHIP

NEW OWNER ACCEPTS ASSIGNMENT OF PREVIOUS OWNER'S PROVIDER AGREEMENT

Consequences: New owner is given previous owner's provider number and agreement. There is no break in coverage, but new owner becomes liable for all penalties, sanctions, and liabilities imposed on or incurred by previous owner. If, after accepting the assignment, the new owner subsequently elects to terminate its provider agreement, it must (under the provisions of section 1866(b)(1) of the Act) file a written notice of its intention, and follow the procedures for voluntary termination.

- The regulations specify that when there is a change of ownership, the existing Medicare agreement is automatically assigned to the new owner (42 CFR 489.18(c). New owners are not required to accept assignment of the agreement but they must state their refusal in writing.

NEW OWNER REFUSES ASSIGNMENT OF PREVIOUS OWNER'S PROVIDER AGREEMENT

Consequences: The previous owner's provider agreement terminates on the date the previous owner ceased doing business.

- NEW OWNER DOESN'T WANT TO PARTICIPATE IN PROGRAM
  Consequences: New owner has, in effect, purchased only capital assets. The business ceased being a Medicare provider on the last day of business of the previous owner.
- NEW OWNER WANTS TO PARTICIPATE IN PROGRAM
  Consequences: New owner will have to request to participate in the program, undergo an initial survey, meet the participation requirements, and be certified. There will be no Medicare coverage or payments until the provider is certified, and no retroactive payments for the period between the termination of the previous owner's provider agreement and the commencement of the new owner's provider agreement. However, the new owner is free of any penalties, sanctions, or liabilities imposed on or incurred by the previous owner.