

G&W

GLASER & WEINER, LLP

ATTORNEYS AT LAW

Medicare Home Health Agency Changes For 2011 **36-Month and Initial Capitalization Rules Amended**

Beginning this year, the Centers for Medicare & Medicaid Services ([CMS](#)) has implemented [new rules](#) on home health agency sales. They are intended to balance the interest of owners who wish to sell their agencies during the three years following Medicare enrollment with CMS's desire to prevent these newly enrolled agencies from being instantly sold to people who did not undergo the standard initial enrollment and survey process. As for enrollment itself, home health agencies will now be expected to show that they have sufficient funds to do business throughout the process and for three months afterward in order to receive Medicare billing privileges.

During 2010, Medicare proposed a broad rule stating that billing entitlements would be ceased for any home health agency undergoing a change in ownership (via sale, transfer, or the old operator relinquishing control) within 36 months of Medicare enrollment. As such, the agency would have to apply for enrollment again, which takes at least two months but often much longer as a Medicare contractor and accreditation surveyors complete their reviews. While CMS wanted to prevent agencies from being "flipped" to unmonitored operators, this rule would have made virtually *any* sale impossible. When combined with the enrollment process and a (withdrawn) CMS interpretation covering even minority ownership sales, affected agencies would have had to operate for months without reimbursement or transfer clients to other agencies to cut costs.

The final rule which took effect in January covers changes only in *majority* ownership during the 36 months after an agency receives Medicare billing privileges, particularly "direct" sales, such as those involving an outgoing and incoming majority operator of the agency's parent company. Additionally, Medicare will not apply the rule to an agency that meets at least one of the following criteria:

- Submission of two consecutive years of full cost reports.
- The agency's parent company undergoes an internal corporate restructuring, such as a merger or consolidation.
- The agency changes its type of entity (e.g. from an LLC to a corporation) without changing owners.
- The agency has a single owner and that person dies.

Medicare's amended rule on initial capitalization directs any home health agency seeking to enroll as a Medicare provider to have three months of funds available from the time it submits an application until three months after actual enrollment. These funds cannot include any received or projected Medicare reimbursements. Previously, agencies only had to demonstrate compliance with the funding requirements when submitting their applications. Upon request,

CMS or Medicare contractors will now be able to request proof of capitalization from agencies at any time until the three months following enrollment have concluded. As such, agencies should budget for longer application timelines than have previously been the case. Violators of this rule may have their application denied or already-granted billing privileges revoked.

DISCLAIMER: The information contained herein is provided by Glaser & Weiner, LLP for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2011 Glaser & Weiner, LLP. All Rights Reserved.