



CMS Issues Policy Memorandum Encouraging Automatic Assignment of Medicare Agreement Following Change of Ownership

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On September 6, 2013, the Centers for Medicare & Medicaid Services (CMS) issued a policy memorandum to State Survey Agency (SA) Directors regarding the change of ownership (CHOW) process and the assignment of Medicare provider agreements to new owners. The memorandum emphasizes policies meant to encourage automatic assignment of the prior Medicare agreement. In particular, the memorandum discusses CMS' concerns that SAs and accreditation organizations (AOs) are not following proper procedure for the timing of the required survey that arises when a new owner rejects automatic assignment of the seller's provider agreement.

Typically, when a Medicare provider is acquired, the Medicare provider agreement is automatically assigned to the new owner. However, new owners have the option to reject automatic assignment, resulting in the termination of the prior Medicare provider agreement. If the new owner rejects assignment, the new provider is treated as an initial applicant and will experience a period of time without Medicare payments. Generally, rejecting assignment precludes the new owner from having successor liability for Medicare overpayments or underpayments.

CMS stated in its September 6 policy memorandum that automatic assignment is an important tool in protecting Medicare Trust Funds because it allows CMS to recover outstanding overpayments to the provider. However, the effectiveness of this tool can be undermined if the incentives to accept automatic assignment are weakened by SA or AO practices that do not abide by CMS' policies.

CMS focused on survey timing in particular, stating that if an initial survey of an applicant that rejected assignment is conducted shortly after the CHOW date, it raises significant doubts that the survey was unannounced. CMS stated, "At a minimum, the appearance is created that the SA or AO collaborated with the new owner on the timing of the survey." CMS can therefore refuse to accept a survey for certification purposes if the survey timing creates reasonable doubt that the survey was unannounced.

CMS also stated that SAs must not conduct initial surveys until they are able to complete their higher priority workload. Also, CMS clarified that the last day of an initial Medicare survey conducted by the SA or AO will not necessarily be the effective date of the new Medicare provider agreement. Since CMS Regional Offices determine the effective date of each Medicare provider agreement, SAs and AOs should not speculate to prospective providers about what the likely effective date will be.

In short, CMS' memorandum is intended to make it more time consuming and burdensome for Medicare providers contemplating rejection of automatic assignment of the seller's provider agreement. Prospective buyers should be aware of this guidance when determining whether to accept automatic assignment.

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