Arnall Golden Gregory LLP

# Client Alert


Contact Attorneys Regarding This Matter:

H. Carol Saul
404.873.8694 - direct
404.873.8695 - fax
carol.saul@agg.com

Lanchi Nguyen
404.873.8520 - direct
404.873.8521 - fax
lanchi.nguyen@agg.com

## CMS Further Tightens Controls on Home Health Enrollment and Certification Processes

On December 23, 2011, the Centers for Medicare & Medicaid Services (CMS) issued two letters to State Survey Agency Directors aimed at tightening CMS's control of home health survey and certification processes.

The first letter (Ref: S&C: 12-14-HHA)[1] restates the 36-month ownership provisions in the Home Health Prospective Payment System (PPS) rule, which revised requirements related to the transfer of home health provider agreements. A home health agency that undergoes a change in majority ownership within three years of initial Medicare enrollment, or within three years of a previous change in majority ownership, must enroll in Medicare as a new agency and obtain a new state survey or deemed status accreditation. The 36-month rule allows four exceptions and does not apply to "indirect" changes in majority ownership (e.g., changes at the holding company level).

While this CMS letter does nothing to change the current scope of the 36-month rule or its exceptions, it does instruct Regional Offices (ROs) and State Survey Agencies (SAs) that receive provider inquiries regarding the applicability of the rule or the related procedures to refer the provider to the Regional Home Health Intermediary (RHHI) or Medicare Administrative Contractor (MAC). The RHHI or MAC will now determine whether the rule applies to the transaction. The letter further notes that CMS will deactivate the agency's Medicare billing number if the sale has already occurred, and that any initial survey required per the guidelines will be considered a Tier IV survey, which means SAs must give priority to the other types of surveys (e.g., statutorily mandated surveys, complaint surveys). Alternatively, the agency may pursue an initial survey through an Accrediting Organization (AO) with deemed status.

A second CMS letter to SA Directors (Ref: S&C: 12-15-HHA),[2] also issued on December 23, 2011, adds yet another layer of review to the home health initial certification process. That step involves a second review of enrollment criteria performed by the RHHI or MAC. CMS's RO will hold the issuance of a CMS certification number (CCN) and provider agreement until this second review has been completed. No timeframe for such second review process is provided. CMS notes that the RHHI/MAC re-review will include site visit verification, an assessment of compliance with capitalization requirements, and confirmation of no Medicare exclusions.

1 http://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter12_14.pdf
2 http://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter12_15.pdf

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006
202.677.4030

www.agg.com


After its re-review, the RHHI/MAC will notify the RO of the result via email. If the home health agency was found in compliance and the RO concurs, the RO will then issue the CCN and provider agreement and forward the Form CMS-2007 to the RHHI/MAC, with the effective date of participation being the date on which the home health agency was determined to the be in compliance.

It is noteworthy that the Affordable Care Act granted CMS the authority to issue moratoria on new home health enrollments in regions of the country perceived to be areas of concentrated fraudulent activity. Senators Chuck Grassley and Orin Hatch have urged CMS to assert that authority but, to date, CMS has not done so.[3] The steps noted above fall short of a moratorium on enrollment, but add additional layers of review and likely lengthen the time required both for a home health change of ownership transaction and for initial enrollment.

3 See *Wall Street Journal*, "Moratoriums Not Being Used To Stop Medicare Fraud" (October 26, 2011), available at http://online.wsj.com/article/AP76897fce369e41539d202436ac9f2863.html.