

Medicare Managed Care Manual

Chapter 12 - Effect of Change of Ownership

Table of Contents *(Rev. 84, 04-25-07)*

Transmittals for Chapter 12

- 10 - Change of Ownership
 - 10.1 - What Constitutes a Change of Ownership
 - 10.2 - Examples
- 20 - Notification Requirements
 - 20.1 - Notification Requirements Prior to an Anticipated Change of Ownership
 - 20.2 - Content of Notice for Changes in Ownership
 - 20.3 - Other Notifications When Circumstance Is Not Deemed a Change of Ownership
 - 20.4 - Address for Sending Notifications to CMS
 - 20.5 - Effect of Failure to Notify CMS of a Change in Ownership
- 30 - Novation Agreement
 - 30.1 - When a Novation Agreement is Required
 - 30.2 - Conditions for CMS' Approval of a Novation Agreement
 - 30.3 - Acceptable Novation Agreements
 - 30.3.1 - Exhibit 1 - Model Novation Agreement

10 - Change of Ownership

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

If the legal entity that contracts with CMS has a change of ownership, the new entity may not necessarily qualify to continue the same Medicare managed care contract with CMS. This chapter outlines the effect of a change of ownership on a Medicare Advantage contract when the contract can be transferred to the new entity, the type of documentation required *for CMS review, and provides* a Model Novation Agreement that can be used by a contracting entity undergoing a change in ownership, *which requires a novation of the CMS contract*. If you have any questions about *how* your managed care organization can fully meet these requirements, please contact your central office (CO) plan manager *at CMS in Baltimore*.

10.1 - What Constitutes a Change of Ownership

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

The following situations usually constitute a change of ownership:

- Asset sale or transfer – sale or transfer of title and property to another party (that party can be a related, affiliated or subsidiary entity or a non-related entity);
- Partnership - the removal, addition, or substitution of a partner (unless the partners agreed otherwise as permitted by applicable State law); or
- Corporation - the merger of the contracting corporate entity, which holds the Medicare contract into another corporate entity; or the consolidation of the corporate entity which holds the Medicare contract with one or more other corporations, resulting in a new corporate body.

***NOTE:** In any type of change of ownership transaction, even those involving a parent corporation and a subsidiary or two affiliated entities, when the surviving entity of a merger or corporate reorganization or the transferee of an asset sale or transfer is an entity that is not an MAO, that entity should contact the Medicare Advantage Group's Division of Qualification and Plan Management (CMS central office) at the earliest possible point to determine if it may need to submit a modified application to be deemed an eligible MAO prior to the transaction/novation.*

The transfer of corporate stock or the merger of another corporation into the corporation that holds a contract with CMS does not ordinarily constitute a change of ownership.

10.2 - Examples

(Rev. 1, 07-02-01)

The following situations are some examples of typical ownership transactions:

- If Corporation X maintains a contract with CMS and subsequently purchases the stock of Corporation Y, the ownership of Corporation X has not ordinarily changed.
- If Corporation X maintains a contract with CMS and subsequently acquires Corporation Z, resulting in a merger of Corporation Z into Corporation X, the ownership of Corporation X has not ordinarily changed. However, if the assets and liabilities of Corporation X are merged with Corporation Z and Corporation Z survives, this constitutes a change in ownership in Corporation X.
- If Corporation A, Corporation B, and Corporation C, all subsidiaries of Corporation P (a holding company), consolidate into Corporation ABC (a new legal entity), AND Corporation A, B, and C are fully dissolved, this constitutes a change in ownership in all Corporations A, B, and C.
- If Corporation A sells or transfers portions of its operations, including operations related to its Medicare Advantage, contract to Corporation B, this constitutes a change in ownership of the Medicare Advantage contract to Corporation B, where Corporation B has been deemed an eligible Medicare Advantage entity by CMS. Where Corporation B is not already deemed an eligible Medicare Advantage organization, it must submit an application for eligibility to CMS as stated in Chapter 11, "Application Procedures and Contract Requirements."
- If Corporation A, a Medicare managed care contractor, merges with its parent, Corporation B, an eligible Medicare Advantage organization, and does not survive the merger, this constitutes a change in ownership.

20 - Notification Requirements

(Rev. 1, 07-02-01)

20.1 - Notification Requirements Prior to an Anticipated Change of Ownership

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

All Medicare managed care contractors, including Health Care Prepayment Plans, cost-based plans, and Medicare Advantage organizations, which are considering a change of ownership, MUST notify CMS at least 60 days prior to the anticipated effective date of change. *If the change of ownership transaction involves a Medicare Advantage Prescription Drug (MA-PD) plan, the organization must separately notify CMS' Medicare Drug Benefit Group in addition to the Central Office MA plan manager.*

20.2 - Content of Notice for Changes in Ownership (Rev. 1, 07-02-01)

The organization's notice to CMS regarding a Change of Ownership (as defined in §20.1) must contain the following information:

- A. Updated financial information to include the most recent quarterly and annual financial statements; pro forma balance and income statements following changes in ownership. This must include an explanation of long term loans; and a narrative discussion of the impact of the change of ownership on the financial health and solvency of the surviving legal entity;
- B. A detailed listing of the significant steps necessary to complete the transaction including the time frames for submitting required information to CMS;
- C. Documentation of any contact with, including evaluations conducted by, the Securities Exchange Commission (SEC) and the Federal Trade Commission (FTC) with respect to the impact of the proposed merger;
- D. Acquisition agreement and closing documents;
- E. Proposed by-laws and articles of incorporation for the newly formed legal entity;
- F. Proposed organization chart for the surviving entity, including the names of its management;
- G. Certificate of authority from the State for the new legal entity and State Medicare Advantage certification form;
- H. A brief, written summary of the health care delivery system(s) for each acquired plan;
- I. Novation agreements, where necessary, from contracted providers of health care;
- J. Financial plan for the new legal entity for a minimum of one year beyond the anticipated date of break even (balance sheets and revenue and expense statements on a quarterly basis)
- K. Listing of available financing to support accumulated deficits, if necessary;
- L. Evidences of coverage and all marketing literature;
- M. Assurances that any outstanding compliance issues such as those discussed in a CMS report or within a Corrective Action Plan will be fully resolved;

N. Assignment of leases for facilities and equipment if the facilities and/or equipment are necessary to provide services under the contract with CMS; and

O. Any other relevant documentation requested by CMS.

NOTE: The above information will be reviewed by CMS in determining whether the new ownership continues to meet legislative and regulatory requirements for operating a Medicare Advantage contract, cost-based plan, or Health Care Prepayment Plan.

20.3 - Other Notifications When Circumstance Is Not Deemed a Change of Ownership (Rev. 1, 07-02-01)

CMS requires that all corporate entities which hold a contract with CMS notify CMS whenever the entity either acquires the stock of or obtains the assets and/or liabilities of, another legal entity, even if the transaction is NOT considered a change in ownership as defined in §10.1. This notification should include pro-forma financial statements to reflect the continued financial viability of the Medicare contractor following any legal transactions.

20.4 - Address for Sending Notifications to CMS *(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)*

All notifications to CMS required in §20.1, §20.3, and §30.1 (below) should be mailed to:

*Division of Qualifications and Plan Management,
Medicare Advantage Group
Center for Beneficiary Choices
Centers for Medicare and Medicaid Services
Mail Stop C4-2-04
7500 Security Boulevard
Baltimore, MD 21244-1850*

20.5 - Effect of Failure to Notify CMS of a Change in Ownership (Rev. 1, 07-02-01)

If the managed care organization fails to notify CMS of a change in ownership within the required time frames, the original contracting entity shall be liable for all capitation payments made by CMS to the organization for services following the legal change of ownership.

30 - Novation Agreement (Rev. 1, 07-02-01)

30.1 - When a Novation Agreement is Required (Rev. 69, Issued: 09-02-05, Effective: 09-02-05)

A Novation Agreement is required to transfer the rights and obligations under the Medicare managed care contract. Novation agreements are only required when there has been a change of ownership (as defined in §10.1). In the absence of a Novation Agreement, a change of ownership shall invalidate a Medicare contract except to the extent that the managed care organization receives capitation payments from CMS. In this circumstance, the new entity or organization may be required to file a new application, demonstrate eligibility, and be determined an eligible entity, in order to contract with CMS.

The CMS recommends that organizations that anticipate a change in ownership submit a Novation Agreement to CMS at least 60 days prior to the effective date of change of ownership. Organizations are required to submit such an agreement no later than 30 days prior to the effective date of change of ownership. Organizations should submit three (3) copies of the Novation Agreement with the additional information requested in subpart 20.2. Organizations **MUST** receive CMS approval of the Novation Agreement prior to the effective date of change in ownership in order to assume an existing contract with CMS. If a Novation Agreement is not completed before the effective date of the change of ownership, the Medicare Advantage contract will be terminated as of that date. Medicare members enrolled under the terminated contract will be disenrolled and provided notice of their remaining Medicare coverage options in accordance with existing statute, regulations, and policies

30.2 - Conditions for CMS' Approval of a Novation Agreement (Rev. 1, 07-02-01)

The CMS does not approve or deny a change in ownership. If a change in the ownership of the contracting entity will occur, CMS will review the arrangements in place under new ownership, as necessary, to ensure continued compliance with legal, regulatory, and contractual requirements.

In general, CMS will approve a proposed Novation Agreement if:

- The successor in interest qualifies as an eligible entity;
- The successor in interest maintains arrangements to comply with the legal, regulatory, and other requirements necessary to perform the contract;
- The materials specified in §20.2 are received in accordance with CMS's requirements;
- The proposed new owner is determined to be in fact the successor in interest or title of the contractor;
- Any performance bond posted is found acceptable; and

- Recognition of the new owner as successor in interest is in the best interests of the Medicare program.

30.3 - Acceptable Novation Agreements

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

Exhibit 1 contains a Model Novation Agreement. This Agreement is intended to serve only as a guide in preparing a novation agreement. Contracting managed care organizations may need to revise the model, as necessary or appropriate, to conform to the circumstances of a particular transaction involving a change of ownership. In order to be accepted, the Novation Agreement must include the following:

- The new owner must assume all obligations under the Medicare managed care contract;
- The new entity must be an eligible organization;
- The entity's previous owner must waive its right to reimbursement for covered services furnished during the rest of the then current contract period;
- The previous owner must guarantee *for the remainder of the current contract year and, if the bid has already been submitted by the original owner, for the upcoming contract year*, that the new owner will carry out the terms of the contract; and
- The previous owners must agree to make its books and records and any other necessary information available to the new owner and to CMS in order to permit an accurate determination of costs for the final settlement of the contract period.

30.3.1 - Exhibit 1 - Model Novation Agreement

(Rev. 84; Issued: 04-25-07; Effective/Implementation Dates: 04-25-07)

(Name of Medicare Managed Care Plan or Medicare Advantage Organization being sold/merged) (Transferor), d.b.a. (Where applicable, the d.b.a. name), a corporation, partnership, sole proprietorship, etc., duly organized and existing under the laws of the State of (indicate the State under which the Transferor is formed or organized to operate) with its principal office in; (Name of owner) (Transferee), a corporation, partnership, sole proprietorship, etc. duly organized and existing under the laws of the state of, with its principal office in and the Centers for Medicare & Medicaid Services (CMS) enter into this Agreement:

(A) RECITALS:

(1) CMS has entered into certain contract(s) with the Transferor, namely:

(Indicate Medicare Managed Care Plan or Medicare Advantage Organization contract type)

(Indicate Medicare contract number/H#s)

The term "the contract(s)" as used in this Agreement, means the above contract(s) including all modifications, made between CMS and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed) and releases executed if CMS or the Transferor has any remaining rights, duties, or obligations under these contract(s). Included in the term "the contract(s)" are also all modifications made under the terms and conditions of these contract(s) between CMS and the Transferee, on or after the effective date of this Agreement.

(2) As of (date change of ownership is effective), the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a (indicate the type of transfer, i.e., a merger, corporate reorganization, or an agreement and purchase of the sale of assets) between the Transferor and the Transferee.

(3) The Transferee has assumed all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all the obligations of the Transferor under the contract(s) by virtue of the above transfer.

(5) The Transferee has indicated a desire to assume the obligations of the Transferor under the contract(s) and to fully perform all obligations that may exist under the contract(s).

(B) IN CONSIDERATION OF THESE FACTS THE PARTIES AGREE AS FOLLOWS:

(1) The Transferor confirms the transfer of the contract to the Transferee, and waives any claims and rights against CMS that it now has or may have in the future in connection with the contract(s).

(2) From and after the date of the change of ownership in § (A)(2), above, the Transferee agrees to be bound by and to perform all the duties and responsibilities of Transferor in each contract in accordance with the conditions contained in the contract(s). The Transferee also assumes all obligations and liabilities of, and all claims against the Transferor under the contract(s) incurred from and after the effective date of the change of ownership in §(A)(2), above.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract(s) with the same force and effect as if the action had been taken by the Transferee.

(4) CMS recognizes the Transferee as the Transferor's successor in interest in and to the contracts. From and after the date of the change of ownership the Transferee by this Agreement becomes entitled to all rights, title, and interests of the Transferor in and to

the contract(s). Following the effective date of this Agreement, the terms "Organization" and "Contractor" as used in the contract(s) shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of CMS against the Transferor. Notwithstanding any other provision of this Agreement, Transferor remains liable for all acts constituting a breach of the contract(s) occurring or arising before the effective date of the change of ownership, to the fullest extent of applicable laws and regulations.

(6) All payments and reimbursements previously made by CMS to the Transferor shall be considered to have discharged CMS's obligations under the contract(s). All payments and reimbursements made by CMS after the effective date of this Agreement in the name of or to the Transferee, shall have the same force and effect as if made to the Transferor, and shall constitute a complete discharge of CMS's obligations under the contract(s) to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that CMS is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from this Agreement other than those that CMS in the absence of this Agreement would have been obligated to pay or reimburse under the terms of the contract(s).

(8) The contract(s) shall remain in full force and effect except as modified by this Agreement. Each party has executed this Agreement which is effective as of the date signed below by the Centers for Medicare & Medicaid Services.

(9) Each party certifies and warrants that it has full power and authority to enter into this Agreement.

(10) Each person executing this Agreement on behalf of a party certifies and warrants that he or she is authorized to enter into this Agreement on behalf of such party.

Centers for Medicare & Medicaid Services

By _____ Date _____

Director, *Medicare Advantage* Group

Centers for Medicare & Medicaid Services

(Name of Transferee)

By _____ Date _____

Title _____

(Name of Transferor)

By _____ Date _____

Title _____

Transmittals Issued for this Chapter

Rev #	Issue Date	Subject	Impl Date	CR#
R84MCM	04/25/2007	Revisions to Chapter 12, Effect of Change of Ownership	04/25/2007	N/A
R69MCM	09/02/2005	Revisions to Chapter 12, "Effect of Change of Ownership," and Chapter 14, "Contract Determination and Appeals	N/A	N/A
R01MCM	07/02/2001	Initial Issuance of Chapter	N/A	N/A