

CHANGE OF OWNERSHIP GUIDELINES

OUTPATIENT PHYSICAL THERAPY OR SPEECH PATHOLOGY SERVICES

The Missouri Department of Health and Senior Services has an agreement with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to assist in determining whether providers of Outpatient Physical Therapy or Speech Pathology Services (OPT/SP) meet, and continue to meet, the Medicare Conditions of Participation. These guidelines are for use when a **change of ownership (CHOW)** of a Medicare certified OPT/SP provider is planned.

A **CHOW** typically occurs when a Medicare provider has been purchased (or leased) by another organization. The CHOW results in the transfer of the old owner's identification number and provider agreement (including any Medicare outstanding debt of the old owner) to the new owner. The regulatory citation for CHOWs can be found at 42 CFR 489.18. If the purchaser (or lessee) elects not to accept a transfer of the provider agreement, then the old agreement should be terminated, and the purchaser or lessee is considered a new applicant.

Federal Guidelines: 42 CFR 489.18 Change of ownership or leasing: Effect on provider agreement.

- (a) What constitutes change of ownership-
 - (1) *Partnership.* In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law, constitutes change of ownership.
 - (2) *Unincorporated sole proprietorship.* Transfer of title and property to another party constitutes change of ownership.
 - (3) *Corporation.* The merger of the provider corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation constitutes change of ownership. Transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute change of ownership.
 - (4) *Leasing.* The lease of all or part of a provider facility constitutes change of ownership of the leased portion.
- (b) *Notice to CMS.* A provider who is contemplating or negotiating a change of ownership must notify CMS.
- (c) *Assignment of agreement.* When there is a change of ownership as specified in paragraph (a) of this section, the existing provider agreement will automatically be assigned to the new owner.
- (d) *Conditions that apply to assigned agreements.* An assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued including, but not limited to, the following:
 - (1) Any existing plan of correction.
 - (2) Compliance with applicable health and safety standards.
 - (3) Compliance with the ownership and financial interest disclosure requirements of part 420, subpart C, of this chapter.
 - (4) Compliance with civil rights requirements set forth in 45 CFR Parts 80, 84, and 90.
- (e) *Effect of leasing.* The provider agreement will be assigned to the lessee only to the extent of the leased portion of the facility.

[45FR 22937, Apr.4, 1980, as amended at 59 FR 56251, Nov. 10, 1994]

An **acquisition/merger** occurs when a currently enrolled Medicare provider is purchasing or has been purchased by another enrolled provider. Only the purchaser's CMS Certification Number (CCN) and tax identification number remain.

Acquisitions/mergers are different from CHOWs. In the case of an acquisition/merger, the seller/former owner's CCN dissolves. In a CHOW, the seller/former owner's CCN typically remains intact and is transferred to the new owner.

A **consolidation** occurs when two or more enrolled Medicare providers consolidate to form a new business entity.

Consolidations are different from acquisitions/mergers. In an acquisition/merger, two entities combine but the CCN and tax identification number (TIN) of the purchasing entity remains intact. In a consolidation, the TINs and CCN of the consolidating entities dissolve and a new TIN and CCN are assigned to the new, consolidated entity.

When requesting a change of ownership (CHOW) of a Medicare certified OPT/SP provider the **new ownership** must submit the following information to:

Missouri Department of Health and Senior Services
Bureau of Home Care and Rehabilitative Standards
P.O. Box 570
Jefferson City, MO 65102

The change of ownership request will not be processed until all of these items are received:

1. Letter of intention to purchase outpatient physical therapy clinic explaining the nature of the sale, transfer, or significant change in corporate status. Indicate whether or not you will be accepting assignment of the Medicare assets and liabilities of the seller/former owner;
2. State Disclosure of Ownership and Control Interest Statement;
3. Assurance of Compliance (Title VI of Civil Rights Act);
4. Office of Civil Rights Packet: An applicant that applies for participation in the Medicare Part A program must receive a civil rights clearance from the Office of Civil Rights (OCR), as set forth in the regulation at 42 CFR 489.10. The applicant can access the OCR website provided below, to either download the Office of Civil Rights Certification Information Request Packet (Civil Rights Packet) or utilize the option to answer all questions and submit the entire civil rights clearance package online.

<https://ocrportal.hhs.gov/ocr/pgportal/>

When the applicant submits hard copies of the civil rights package, the completed information must be submitted with other required forms to the State agency.

If the applicant chooses to submit the civil rights package online, the submission will go directly into the OCR intake queue, and the applicant will receive an e-mail from OCR stating that the provider completed the civil rights submission. Please include this e-mail in the documentation to be mailed to the State Agency. This e-mail will contain

an OCR number, which is critical to OCR's ability to access the applicant's submission from the OCR intake queue.

5. Request for Certification in the Medicare and /or Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services
6. Health Insurance Benefit Agreement On the second line of the Health Insurance Benefits Agreement, after the term Social Security Act: enter the corporate name of the enterprise, followed by the "doing business as" d/b/a name (if different from the corporate name). Ordinarily, the agreement will be completed with the name used on all official correspondence. For example, the XYZ Corporation, owner of the Community OPT/SP, would enter on the agreement: "XYZ Corporation, d/b/a Community OPT/SP." A partnership of several persons doing business as the Easy Care OPT/SP would complete the agreement to read: "Robert Johnson, Louis Miller, and Paul Allen, partners, d/b/a Easy Care OPT/SP." A sole proprietorship would complete the agreement to read: "John Smith, d/b/a Good Care OPT/SP." The person signing the Health Insurance Benefits Agreement must be someone who has the authorization of the owners to enter into this agreement.
7. Proof of current registration with the Missouri Secretary of State. In addition, if the agency is using a "doing business as" (d/b/a) name, you will need to provide proof of the fictitious filing. For any questions regarding the registration process or fictitious filing, contact the Secretary of State office at 573- 751-4153. All forms received by the Bureau must list the legal entity name and the d/b/a, if applicable.
8. Pre and Post Organizational Chart.
9. **A Medicare Enrollment Application (CMS-855A)** must be completed and submitted to the Medicare Administrative Contractor. To determine who your Administrative Contractor will be, please access the following link:
<https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/Who-are-the-MACs.html>

Access the Medicare website link www.cms.hhs.gov/MedicareProviderSupEnroll/ for enrollment process information & forms as well as explanation of fees.

The CMS-855A must be completed and returned to the Administrative Contractor for approval before you can receive Medicare payments.
10. If there is a new administrator, please attach a copy of a current resume along with the board meeting minutes to appoint the new administrator.

IMPORTANT POINTS TO REMEMBER:

- **As soon as the transaction is complete, please submit proof of the completed transaction to this Bureau as evidenced by a bill of sale, stock purchase agreement, or assignment and assumption agreement.**
- The state agency (Bureau) processes the information submitted for CHOW, but CMS Regional Office makes the final determination of the CHOW.

- The CMS certification number (CCN) cannot be bought/sold. A CCN is not the "property" of any individual or legal entity. A buyer is assigned the CCN and the provider agreement if the buyer purchased a participating provider organization. The CCN is issued by the Medicare program and is under the control of the Secretary of DHHS, subject to the law, regulation, and program policy.
- Patients are not assets. They must be notified prior to the CHOW and provided with a choice of provider for their OPT/SP SERVICES. Documentation of notification of the patient and the patient's choice of provider must be documented in the clinical record.
- All paperwork for the facility, including clinical record notes, must reflect the new facility name when a change of name occurs as a result of a CHOW. This must occur on the effective date of the CHOW.
- This Bureau has the option to conduct an unannounced, on-site survey as a result of a change of ownership.

After the Medicare Administrative Contractor, MAC has determined all the requirements are met, the Health Insurance Benefit Agreement will be countersigned by CMS. One copy of the agreement will be returned to you along with notification of any change in your CCN or changes in reimbursement information from Medicare Administrative Contractor.

Additional information regarding Medicare certification is available on our website at <http://www.health.mo.gov/safety/homecare>. After a change of ownership, the provider must remain in compliance with all requirements for Medicare certification. All requirements and forms are available on our website at <https://health.mo.gov/safety/homecare/chow-outpatientphysicaltherapy.php>.

Please contact the David.Atkinson@health.mo.gov, Bureau of Home Care and Rehabilitative Standards at (573) 526-5587 with any questions.