

BQC-93-062

Date: November 4, 1993

To: Nursing Homes
Facilities for the Developmentally Disabled
Supersedes 85-002

NH 33
FDD 24

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: Nursing Home/FDD Change of Ownership - Statutory Requirements of Notification

Whenever a change of ownership is pending, it is the responsibility of the existing owner to notify the Provider Regulation Section, Bureau of Quality Compliance, of the anticipated change of ownership. Failure to follow this requirement places the present operator in considerable jeopardy from the standpoint of ongoing responsibility for the care of residents until the license is officially transferred. The new owner will be ineligible for Medical Assistance, unless licensed and certified. Change of ownership requirements and typical change of ownership situations are explained as follows:

LICENSE

Chapter 50.03(13)(a)-(d), Wis. Stat., states that:

Whenever ownership of a facility is transferred from the person or persons named in the license to any other person or persons, the transferee must obtain a new license.... Penalties under sub. (1) shall apply to violations of this subsection.... Such penalties upon conviction may include a fine, or imprisonment or both.... The transferee (new operator) shall notify the department of the transfer, file an application under sub. (3)(b) and apply for a new license at least 30 days prior to final transfer. ...The transferor (existing operator) shall remain responsible for the operation of the home until such time as a license is issued to the transferee...

The 30-day time period allows time for the Bureau to ensure that the application is in order, the license fee has been paid and that the home and new operator are in compliance with state rules and, if certified, Medicare and/or Medicaid federal regulations.

The new operator is responsible for correction of all outstanding violations. The transferor remains liable for all forfeitures assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

The 30-day notification to the Bureau of Quality Compliance must be in the form of a properly completed license application.

CERTIFICATION

If the facility wishes to continue to be certified in the Medicaid Title XIX program, a new provider agreement will be issued through the Bureau of Health Care Financing (BHCF), Division of Health, and in Medicare by the Federal Health Care Financing Administration (HCFA), Region V, Chicago. Either of these two agencies reserve the right to make a final determination as to whether a change of ownership

has occurred. The BHCf will then calculate the Title XIX daily accommodation rate. Once the transfer of ownership has been finalized and a new license issued, the new operator will not be allowed to bill for reimbursement using the previous operator's provider number.

OWNERSHIP DEFINED

For licensure and certification purposes, the owner is the party ultimately responsible for operating the business enterprise. This party is legally responsible for decisions and liabilities in a business management sense. The same party also bears the final responsibility for operational decisions and for the consequences of these decisions.

TYPICAL CHANGE OF OWNERSHIP SITUATIONS

1. Sole Proprietorship. If a facility is an enterprise owned by a single individual, a transfer of title of the enterprise to another person or entity, whether or not including transfer of title to the real estate, constitutes a change of ownership. It is also a change of ownership if the former owner becomes one of the members of a partnership or corporation succeeding him as the new owner.
2. Partnership. In a partnership, the removal, addition, or substitution of an individual as a partner in the association, dissolves the old partnership and creates a new partnership and is considered a change in ownership.
3. Corporation. In an incorporated enterprise, the corporation is the owner. Even though corporation stock may be transferred, there would not be a change of ownership as long as the same corporation continued to be responsible for the operation of the facility as before.

A merger of one or more corporations with the provider corporation surviving (i.e., a merger "into" the provider corporation) is recognized as a change of ownership, if:

- a. the corporation that survives is not the former owner of the provider institution; or
 - b. consolidation of two or more corporations results in the creation of a new corporate entity, even though one or more of the merging corporations were previously providers.
4. Management Contract. Regardless of what management contracts may say, the licensed entity will continue to be held responsible for regulatory concerns.
 5. Leasing. When a building is leased in whole or in part, the lessee does not automatically acquire ownership of the nursing home operation. If the operation is leased, the license and provider agreement with the former operator is voided and the lessee must obtain a new license and provider agreement.

As existing owners of a nursing home in Wisconsin, you are reminded therefore of the need to keep this information available for reference when a change of ownership is contemplated for your facility(s). Remember, the first contact is with the Bureau of Quality Compliance and that there is a statutory requirement for a 30 day notice in the form of an application prior to final transfer.

If you have any questions, please call Lois Smith, (608) 266-3306, or Allan Stegemann, (608) 266-2055.