

Alert | Health Care & FDA Practice



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Buying or Selling a Hospice? The 36-Month Rule Prohibiting Change of Ownership Now Applies

Effective Jan. 1, 2024, the Centers for Medicare and Medicaid Services (CMS) extended the so-called “36-month rule” to hospices, prohibiting a change in majority ownership of a hospice, as well as the transfer of a Medicare provider agreement and Medicare billing privileges, in the 36 months after Medicare enrollment or a prior change of majority ownership. The 36-month rule previously only applied to home health agencies.

In its reasoning for expanding the rule, CMS cited concerns about an increase in hospice changes of ownership. The rule is intended to strengthen the integrity of the Medicare hospice program by preventing hospice providers from selling hospices to avoid surveys and accreditation review, and by increasing oversight of hospice owners.

With CMS extending the 36-month rule to hospices, a hospice is prevented from undergoing a change in majority ownership, meaning a change in more than 50% of the hospice’s direct ownership interests, within 36 months of the hospice’s Medicare enrollment or its most recent change in majority ownership. For purposes of this prohibition, a change in majority ownership includes transactions involving a purchase of assets, stock transfers, mergers, or any other acquisition that has the effect of changing more than 50% of the hospice’s direct ownership interests (including cumulative transfers to an individual or entity).

If a transaction triggers the 36-month rule, the Medicare provider agreement and billing privileges of the hospice will not transfer to the new owner. Thus, structuring transactions and acquisitions with hospices is critical in navigating compliance with the 36-month rule.

Please see the [CMS press release announcing the change](#) for more information.

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