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DECEMBER 10, 2008

Stock Transactions – Advance Notice and Approval?

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A recent CMS Transmittal contains a significant change that may affect all stock purchases for certified providers and suppliers. Transmittal 272, published by CMS on November 7, 2008, is titled "Clarification of Provider Enrollment Procedures Involving Certified Suppliers and Providers." However, this Transmittal, which is effective December 8, 2008, changes the CMS Program Integrity Manual, Chapter 10, in a potentially significant way.

Section 5.5.3, identified as "Tie-In Notices," lists a "stock transfer" as one of the changes requiring a "recommendation and referral to the State/RO [Regional Office]" and an authorization from the RO before the updates can be entered into the PECOS database. Historically, changes of ownership required advance notice under the regulations, and stock transfers were not considered to be a change of ownership transaction. Nonetheless, although the Transmittal does not characterize stock transfers as a "change of ownership," stock transfers are now included in the list of types of transactions that require advance notice.

The new language raises several key questions. Transmittal 272 appears to require the Medicare enrollment contractor to notify the state survey agency and obtain RO authorization before it processes the enrollment updates. There is, however, no guidance regarding when this advance notice is to occur, i.e., must it occur prior to the effective date of the stock transfer. Does CMS really intend to require "approval" of a proposed transaction? What if the regional office does not "authorize" the transaction for some reason?

Ober|Kaler's Comments: Due to the concerns that we have regarding the implications of this language, we are working with the American Health Care Association to try and obtain clarification from CMS. We will share any insight we learn from CMS as it becomes available to us.

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