

Acquisitions: Suggested Changes to Implement in the HHA Chapter

For Discussion of Agenda Item #2 April 14, 2015 Meeting of the HHA Advisory Group

Background:

Although there have been some opportunities for HHA development and expansion in recent years through scheduled CON reviews, the largest changes in Maryland HHA services have occurred in the area of non-CON-regulated acquisitions. As of March 2015, 22 of the 50 general HHAs, or 44 percent, entered Maryland by way of acquisition of an existing Maryland HHA. An additional 12 general HHAs were acquired by either an existing Maryland HHA or another Maryland entity.

The current HHA Chapter of the State Health Plan does not address acquisitions. The CON procedural rules, found at COMAR 10.24.01 and applicable to all changes of health care facility ownership, only require notification of an acquisition at least 30 days before the transaction closes and this notice must include some information.¹ The procedural regulations also have a provision, adopted in 2003, for HHAs being acquired.

In an acquisition of a home health agency, the purchaser may only acquire the authority to offer home health agency services in jurisdictions in which Commission records show that the facility being acquired either provided that service during fiscal year 2001, or was granted a Certificate of Need after that date.

Acquisition of HHA's Authority to Serve Certain Jurisdictions

As described in the White Paper, staff conducted a comparative analysis to ascertain the potential impact of modifying the current 2001 acquisition rule for existing HHAs, found at COMAR 10.24.01.03A(2). Data showed that, under the strictures of this subsection, a person purchasing one of seven agencies would not be acquiring authority to serve all the jurisdictions that the agencies currently serve because not all of those jurisdictions were served in fiscal year 2001.

¹ The person acquiring the facility must provide the notice, with a copy to the local health officer in the affected jurisdiction. The notice must include the health care services provided by the facility, the bed capacity, or jurisdiction served, if a community-based service, complete data on admissions for the prior calendar year, gross operating revenue generated during the last fiscal year, and any other information required in the applicable chapter of the State Health Plan.

Commission staff believes that given the impact that this rule could have more than ten years after its adoption, it should be removed.

It is suggested that new rules be adopted in the replacement HHA Chapter to address acquisition of an agency's authority to serve certain jurisdictions to include the following:

- A buyer of a freestanding HHA is recognized as acquiring authority to serve each jurisdiction for which the HHA is authorized. In recent years, OHCQ has identified on a Maryland HHA license the jurisdictions in which the agency is authorized to provide services, using information provided by the MHCC.
- In instances where a hospital-based agency is being acquired, the buyer may acquire the authority to only serve all residents in the jurisdiction in which the hospital-based agency is geographically located, unless such hospital-based agency has obtained authority to serve other jurisdictions through CON, which would be noted on the license.² The buyer would not acquire the authority to follow patients to any jurisdiction after discharge from the hospital that previously owned the HHA, unless the HHA is being acquired as part of an acquisition of the entire hospital.

New HHA Acquisition Rules in HHA Chapter

Since HHAs serve a vulnerable population in their own residences, staff believes that greater transparency and oversight of HHA acquisitions are warranted. It is recommended that proposed HHA regulations prohibit the acquisition of existing Maryland HHAs by persons with any history of Medicare fraud or abuse, or other serious criminal activity. Secondly, purchasers should be required to commit to serving Medicare, Medicaid, commercial, self-pay, and uninsured patients and to have charity and reduced charges for the indigent. This commitment should be explicitly stated by the buyer and MHCC should explicitly include the commitment as a term of its determination of coverage for an HHA acquisition.

Additionally, the following rules are also recommended:

- The HHA Chapter should specifically state that an HHA, as a defined health care facility, may be acquired. The acquisition of part of an HHA (i.e., authority to serve one or more jurisdictions but not the entire HHA) is not permitted;
- An agency that is not operational cannot be acquired;
- An agency cannot be acquired if it has outstanding CON conditions;

² There are currently three hospital-based agencies: Carroll Home Care located in Carroll County; Frederick Memorial Hospital (FMH) Home Health Services located in Frederick County; and Meritus Home Health located in Washington County. Carroll Home Care is the only hospital-based HHA also awarded CONs (in 2009) to serve residents in Baltimore and Frederick Counties.

- A buyer must affirm that the services provided will not change as a result of the proposed acquisition, and must provide information on corporate structure and affiliations of the purchaser, the purchase price, and the source of funds;
- A buyer must disclose whether any of its or a related entity's principals have ever pled guilty to, or been convicted of a criminal felony;
- A buyer must attest to no record of Medicare/Medicaid fraud or abuse;
- A buyer must agree to maintain Medicare and Medicaid certification;
- A buyer must indicate whether it is maintaining the Seller's Medicare provider agreement and, if not, it must provide a plan for operating the HHA prior to obtaining Medicare certification to assure continuity and access to HHA services;
- If the buyer is an existing provider of Maryland HHA services, it must disclose deficiencies cited by OHCQ during the most recent fiscal year and document completion of any required plan of correction; and
- The seller and the buyer must agree to collaborate in providing full 12-months of data to MHCC's Annual HHA Survey.

Discussion Questions:

- What has been the impact of recent HHA acquisitions on your agency, if any?
- Should MHCC evaluate the performance of an entity seeking to acquire a Maryland HHA? If so, and the buyer is a non-HHA provider, how should MHCC evaluate its quality performance?
- In cases where a corporation or its principals has prior convictions for Medicare fraud or abuse, should MHCC consider evidence showing how character qualifications of the buyer may have changed? If so, under which circumstances?