

**RECENT CHANGES TO MEDICARE PART A ENROLLMENT FORMS –  
DISCLOSURES REQUIRED FOR CERTAIN FINANCING SOURCES****by Jason Caron, Philo Hall & David Matyas****August 2011**

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Disclosing details of parties with certain mortgages, deeds of trust, or security interests in Medicare Part A providers is explicitly required in the recently revised Medicare enrollment forms, effective as of July 1, 2011. This expanded classification of “ownership interests and/or managing control information” represents a significant change in disclosure, and presents new questions around compliance for Medicare Part A providers and those that finance or are involved in transactions that contemplate mortgages, deeds of trust, and other security interests.

By way of background, Medicare Part A providers (e.g., hospitals, skilled nursing facilities, home health agencies, federally qualified health centers, end-stage renal disease facilities, outpatient rehab facilities) must enroll in the Medicare program using the Medicare Enrollment Application for Institutional Providers (Form CMS-855A) in order to be eligible for payment for covered services provided to beneficiaries. Periodic re-enrollment and timely updating of any change in information is also required using Form CMS-855A. The purpose of the enrollment application is to inform CMS of: (i) the identity of the Part A provider, (ii) whether it meets certain provider qualifications, (iii) where it renders services, (iv) the identity of the owners, and (v) other information to establish correct claims payments.<sup>1</sup>

One of the key pieces of information that is disclosed on Form CMS-855A is the ownership and control information. The Social Security Act explicitly lists “the owner of a whole or a part interest in any mortgage, deed of trust, note, or other obligation secured . . . by the entity or any of the property or assets thereof” as a “person with an ownership or control interest” over a provider.<sup>2</sup> In 2009, as part of a revision to the Medicare Program Integrity Manual, the Medicare Program began to describe certain

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<sup>1</sup> See *Agency Information Collection Activities: Submission for OMB Review; Comment Request*, 76 Fed. Reg. 29247 (May 20, 2011).

<sup>2</sup> 42 U.S.C. §1320a-3(a)(3)(A)(ii).

mortgages, deeds of trust, notes and other secured obligations as ownership or controlling interests.<sup>3</sup> However, it was not until recently that these concepts were actually incorporated into the CMS-855A.

Consistent with the Paperwork Reduction Act of 1995, CMS published an Agency Information Collection Activities Notice, on May 20, 2011, consisting of a summary of the proposed revisions to the enrollment forms, with public comments due by June 20, 2011.<sup>4</sup> The final, revised forms became effective July 1, 2011.<sup>5</sup> The revised CMS 855A now explicitly requires disclosure of any entity whose mortgage, deed of trust, or other security interest in the Part A provider is equal to five percent (5%) or more of the total property and assets of the Part A provider.<sup>6</sup> This includes investment funds, holding companies, banks and financial institutions, and charitable and religious organizations.<sup>7</sup> The Part A provider must report the entity's name, address, tax identification number, type of organization, percentage of interest in the provider, and an organizational chart identifying all of the owning or controlling entities and their relationship to each other and the provider. Dates of birth and social security numbers are additionally required for individuals who hold security interests.

CMS did not provide a reason for the addition in the Agency Information Collection Activities Notice or in a supporting statement for the Paperwork Reduction Act.<sup>8</sup> Ultimately, Medicare Part A providers and those that finance providers will want to proactively ensure compliance with these reporting requirements when the providers are involved in any transactions that contemplate mortgages, deeds of trust, and other security interests. If disclosure is required, then Medicare rules require reporting "changes of ownership or control of the provider" within thirty calendar days.<sup>9</sup>

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<sup>3</sup> See Medicare Program Integrity Manual, Ch. 10, Sec. 4.5.1(a) (Rev. 362, Jan. 14, 2011).

<sup>4</sup> See *Agency Information Collection Activities*, *supra* note 1. The May Federal Register notice was a revision of the burden hour estimate in an earlier summary of the proposed revisions to the enrollment forms published at 76 Fed. Reg. 13415 (Mar. 22, 2011).

<sup>5</sup> See CMS, Details for CMS 855A, *available at*: <https://www.cms.gov/CMSForms/CMSForms/itemdetail.asp?itemID=CMS019475> (last accessed Aug. 5, 2011).

<sup>6</sup> See Form CMS-855A, at 27.

<sup>7</sup> See *id.* at 28.

<sup>8</sup> See *Agency Information Collection Activities*, *supra* note 1; CMS, Supporting Statement for Paperwork Reduction Act Submissions: CMS-855 Medicare Enrollment Applications Package Revision, *available at*: <http://www.cms.gov/PaperworkReductionActof1995/PRAL/itemdetail.asp?filterTye=none&filterByDID=99&sortByDID=2&sortOrder=descending&itemID=CMS1214408&intNumPerPage=10> (last accessed Aug. 5, 2011).

<sup>9</sup> 42 C.F.R. §424.520(b).

*This Client Alert was authored by **Jason Caron and David Matyas. Philo Hall**, a Summer Associate (not admitted to the practice of law) in Epstein Becker Green's Washington, DC, office, contributed significantly to the preparation of this alert. For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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