

Requirements and Procedures for Successor Liability

Pursuant to the *California Code of Regulations* (CCR), Title 22, Sections 51000.20.1, 51000.24.1, 51000.25.2 and 51000.32 as introduced in regulation package R-04-04E, the Department of Health Services (DHS) is introducing the ability for providers to accept successor liability with joint and several liability requirements. These sections have been adopted to allow a provider to assign his/her provider number to a new applicant, by joining that new applicant to the provider agreement, on condition that the enrolled provider remains jointly and severally liable for all debts and obligations to DHS arising from that agreement. This regulation is elective on the part of the provider, and not mandatory. However, if he/she elects to utilize this provision, he/she must strictly comply with its provisions.

This ability has been developed in response to providers' requests for some means by which a new owner can continue to use the existing provider number to bill and receive payments for services, goods, supplies or merchandise in the event of a change of ownership. It is expected that successor liability with joint and several liability will only be used when the transferee applicant is not already enrolled in the program at another location, because if the transferee applicant is enrolled at another location, pursuant to *Welfare and Institutions Code*, Section 14043.26(h), the transferee applicant can already use his/her own provider number to bill for services provided at the new location, while he/she is awaiting DHS' acceptance of his/her application for enrollment at the new location.

CCR, Subsection 51000.20.1(a) introduces the term "Provider Transferor" because of successor liability with joint and several liability. The Provider Transferor is the seller or transferor of the business attached to the Medi-Cal provider number for that location.

The term "Transferee Applicant" is to cover the owners or transferees or purchasers of a business that are existing active Medi-Cal providers. CCR, Section 51000.32 provides that the transferee applicant can be joined to an existing Medi-Cal provider agreement for the temporary period until the Transferee Applicant obtains its own provider number. This definition is needed to ensure that providers and applicants understand who can qualify for successor liability with joint and several liability.

Successor liability may occur when there is:

- A change of ownership.
- 50 percent or more of the assets owned by a corporation at the location for which a provider number has been issued has been sold or transferred.
- A new site permit required by the Board of Pharmacy.
- A cumulative change of 50 percent or more in the person(s) with an ownership or controlling interest since the information provided in the last complete application package that was approved for enrollment.

Within 35 days of any of these events, if the Provider Transferor and the Transferee Applicant agree to assume joint and several liability for the purposes of successor liability, the Transferee Applicant shall submit a complete Medi-Cal enrollment application package.

The effective date of enrollment for the Transferee Applicant who submits an approved Medi-Cal enrollment application package pursuant to CCR, Section 51000.32 shall be the date of the transfer listed on the *Successor Liability Agreement* form (DHS 6217). The previously transferred provider agreement and number will be deactivated effective the date of the notice of the new provider number.

If the Transferee Applicant's application is denied, the provider number and provider agreement for that location will be deactivated effective the date of transfer. Both the Provider Transferor and the Transferee Applicant will be jointly and severally responsible for all amounts paid for provided services, goods, supplies, etc. provided to a Medi-Cal beneficiary after the date of transfer.

To qualify for successor liability with joint and several liability, a Provider Transferor and Provider Transferee must submit the *Successor Liability Agreement* form, signed and dated by both providers and postmarked within five days of the occurrence listed in CCR, Section 51000.30(b).

The *Successor Liability Agreement* form, shall include the following information:

- Legal name of Provider Transferor, which is the name currently on file with the Internal Revenue Service
- Current provider number for the location affected
- Fictitious Business Name of the Provider Transferor, if applicable
- Legal name of Transferee Applicant, which is the name currently on file with the Internal Revenue Service
- Current provider number(s) of the Transferee Applicant, if applicable
- Fictitious Business Name of the Transferee Applicant, if applicable
- A statement signed and dated by both Provider Transferor and Transferee Applicant, wherein they accept joint and several liability for all debts arising from the Medi-Cal provider agreement applicable to the location from which the provider agreement and provider number was issued by DHS

The *Successor Liability Agreement* form (DHS 6217) can be viewed or downloaded from the Provider Enrollment Branch (PEB) Web page by going to the Medi-Cal Web site at www.medi-cal.ca.gov and clicking the "Provider Enrollment" link in the left menu.