



CHANGE OF OWNERSHIP NOTIFICATION— Simple Regulation, *Complex Reality*

By S. Graham Simmons, Esq.

AN AMBULATORY SURGICAL CENTER (ASC), like all facilities licensed under the Pennsylvania Health Care Facilities Act, must give the Department of Health (DOH) at least 30 days prior written notice of any change involving 5% or more of its existing ownership. That is all that the governing regulations contained in Part IV of Title 28 in the Pennsylvania Code have to say on the subject. It sounds so very simple, right?

If you are in the process of transferring ownership of a health care facility, or have already done so without notifying the DOH of the transaction, be warned that much more is required.

I recently represented an ASC in a change of ownership and decided that the governing regulations prescribed a procedure that was decidedly too simple in this age of exhaustive administrative reviews. When I called the DOH to confirm my reading of the regulations, I was surprised to learn just how extensive the notice filing requirements actually are.

Instead of submitting a simple letter to the DOH, my client was required to fill out (and you will be, too) an ASC Licensure Application, a change of ownership questionnaire (filed with DOH's Office of the General Counsel) and a DOH password agreement. These forms were just the tip of the iceberg. ASCs deal not just with state regulators, but also with the federal Centers for Medicare and Medicaid Services (CMS). The CMS requires a Health and Human Services certification to be filed prior to the effective date of the change in ownership and a document known as CMS Form 855 to be filed within 30 days following the completion of the transaction. Furthermore, the DOH carefully scrutinizes the buyer's entire corporate structure (including parent organizations) to ensure that no new owners have been the subject of civil or criminal fraud charges, have had to pay a civil fine, or have been convicted of Medicare or Medicaid fraud and abuse.

The practical lesson here is that health care facilities face a complicated regula-

tory process and multiple filings in order to accomplish a change of ownership. Every acquisition has its deadlines, and those deadlines must recognize the reality that failure to comply with the necessary change of ownership requirements of the CMS and the DOH can be costly.

Norris McLaughlin & Marcus, P.A. attorney S. Graham Simmons is an associate with the firm's Health Care Practice Group. He has been recognized in Philadelphia Magazine as a "Rising Star," a distinction for lawyers ages 40 and younger or who have been practicing for less than 10 years and reserved for no more than 2.5% of all attorneys in Pennsylvania. Graham was honored in 2011 as one of the Eastern Pennsylvania Business Journal's Top 20 Under 40, which recognizes young professionals who exhibit talent and promise and who have a well-documented track record of achievements in business. If you have any questions regarding health care legal matters, please feel free to contact the author by email at gsimmons@nmmlaw.com. ■