

# Publications

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## Buyer Beware - New Restrictions on the Purchase and Sale of Medical Equipment Companies

Durable Medical Equipment (DME) owners and prospective purchasers need to be aware of a new Medicare rule that significantly restricts the transfer of ownership in these types of companies. Failure to be aware of the new restriction could result in a buyer ending up with a company that cannot bill Medicare. Worse, attorneys and brokers involved in the deal could end up with egg on their faces for not being aware of the restriction.

Historically, a change in stock ownership of a Medicare-enrolled DME only requires that the parties to a transaction complete a CMS 855S form advising CMS of the changes in stock ownership. The Medicare provider number remains the same and there is no downtime in the DME's ability to bill Medicare. But effective January 1, 2026, CMS finalized a rule that Medicare billing privileges will not transfer to a new owner of a DME supplier if the effect of the transaction will be a change in majority ownership of the company within 36 months after the DME's initial Medicare enrollment effective date or within 36 months after the DME's supplier's most recent change in majority ownership ("the 36-Month Rule"), unless an exception applies.[1] CMS defines a change of ownership for purposes of this rule as a change in more than a 50 percent direct ownership interest (including by asset sale, stock transfer, merger, and consolidation).[2] This includes a situation where there have been multiple ownership changes within the 36 months, none of which is more than 50%, but when added together do exceed 50%.[3]

There are some exceptions to the 36 Month-Rule:

- A DMEPOS supplier's parent company is undergoing an internal corporate restructuring, such as a merger or consolidation;
- The owners of the existing DMEPOS supplier are changing the DMEPOS supplier's current business structure (for example, from a corporation to a partnership (general or limited); from a limited liability company (LLC) to a corporation; or from a general or limited to an LLC) and the owners remain the same; or
- An individual owner of the DMEPOS supplier dies.

What this means for a DME supplier undergoing a change in ownership that triggers the 36-Month Rule is that the prospective buyer will have to enroll as a new supplier and

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receive an new Medicare provider number. The time it takes for CMS to process a new enrollment can take months, and there is no guarantee that the application will be approved. This could have significant implications for ownership changes of DME suppliers as CMS projects 3,768 DME suppliers each year have a change in majority ownership. The 36-Month Rule is intended to address program integrity concerns that CMS believes arise when there are frequent changes in ownership of this type of supplier. Other changes that are included in the new rule to address these concerns are:

- DMEs now have to be resurvey and reaccredited every year. Currently, they are only required to do this every 3 years.
- Stricter requirements for becoming and remaining a CMS-approved DME accrediting organization.
- All surveys of DMEs by accrediting organization must be unannounced.

Using experienced health care counsel in any kind of purchase of a health care business can help avoid these types of unexpected restrictions.

[1] 90 FR 55342 at 55475.

[2] 42 CFR § 424.551.

[3] *Id.*