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UNITED STATES BANKRUPTCY COURT

In Re:	]	Case No. 98-02141
	]	
COMMUNITY HOME HEALTH, INC.,	]	The Department of Health and Human
	]	Service Gives Notice of Its
	]	OBJECTION TO AMENDED NOTICE OF
	]	SALE BY TRUSTEE
Debtor.	]	
	]	

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The Department of Health and Human Services, Health Care Financing Administration (HCFA), by and through it attorney, Warren Derbidge, Assistant United States Attorney, objects to the Trustee's Sale of "All receivables, claims, and causes of action against federal agencies or their agents related to Medicare including Dept. of Health & Welfare, Health Care Financing Administration ("HCFA"), Social Security Administration and Blue Cross of California.", as stated in the Amended Notice of Sale by Trustee dated April 14, 2000. The Amended Notice also states that the sale includes "the corporate name of "Community Home Health, Inc.", the corporate records, and all rights to pursue said claims on behalf of debtor."

HCFA has five objections: the Trustee cannot sell a cause of action against Medicare; the

Trustee cannot sell the right to Medicare payments; the Trustee cannot sell the right to Medicare payments free and clear of HCFA's right to recoup any overpayments from such payments; the Kaisers and other individuals could not pursue any appeals against Medicare; the sale of a corporate name is not a sale of the corporation itself, and only the corporation itself, as represented by the Trustee in bankruptcy, could pursue any appeals on behalf of Community Home Health, Inc.

1. The Trustee Cannot Sell a Cause of Action Against Medicare, the Health Care Financing Administration, the Department of Health and Human Services or Blue Cross of California.

Apparently the Kaisers wish to pursue a cause of action against Medicare, and Medicare's fiscal agent, Blue Cross of California. Only Community Home Health, Inc., the entity that participated in Medicare as a Home Health Agency provider can pursue appeals to the Provider Reimbursement Review Board (PRRB) to contest cost report overpayments. Medicare intermediary decisions such as the decisions made by Blue Cross of California that the debtor owes Medicare money can only be reviewed in accordance with Social Security Act procedures.

42 U.S.C. §§ 405(h), 1395ii. These sections state as follows:

The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary or any officer of employee thereof shall be brought under section 1331 or 1346 of title 28, United States Code, to recover on any claim arising under this title.

Failure to follow the administrative procedure deprives the federal courts of subject matter jurisdiction and eliminates any further judicial review. Your Visiting Nurse Services, Inc. v.

Shalala, 119 S.Ct. 930, 933-35 (1999), Daniel Freeman Memorial Hospital v. Schweiker, 656 F.2d 473, 475-76 (9th Cir. 1981), Pacific Coast Medical Enterprises v. Harris, 633 F.2d 123, 137-39 (9<sup>th</sup> Cir. 1980).

Neither the Trustee nor the Kaisers can pursue a claim against Blue Cross of California concerning Medicare matters. The Health Care Financing Administration (HCFA) is the real party in interest in any litigation concerning the Medicare program, not the fiscal intermediary, Blue Cross of California. 42 C.F.R. § 421.5(b). Mitchell v. Occidental Ins., Medicare, 619 F.2d 28, 30 (9<sup>th</sup> Cir. 1980) .

2. The Trustee Cannot Sell the Right to Medicare Payments.

Medicare payments can only be made to the provider, and cannot be assigned to another party unless specific exceptions apply. Sale by a Trustee is not one of the exceptions. 42 U.S.C. § 1395(g), 42 C.F.R. § § 424.73, 90.

3. The Trustee Cannot Sell the Right to Receive Medicare Payments Free of Medicare's Right to Recoup Medicare Overpayments.

Medicare has a statutory right to recoup Medicare overpayments from any Medicare payments that may be due. 42 U.S.C. § 1395g. U.S. v. Consumer Health Services, 108 F.3d 390 (D.C. Cir. 1997).

4. The Kaisers and other individuals are not the Medicare Provider, and could not pursue any Medicare Appeals to the PRRB for Community Home Health, Inc.

Only Medicare providers can appeal to the PRRB. In this case, only Community Home Health, Inc. as represented by the Trustee in Bankruptcy could pursue appeals to the PRRB. 42 U.S.C. § 1395oo, 42 C.F.R. § 405.1801 et seq.

5. Sale of the corporation's name is not a sale of the corporation itself, and would not transfer authority to act on behalf of the corporation.

The legal entity, Community Home Health, Inc., is now in Chapter 7 Bankruptcy, and the

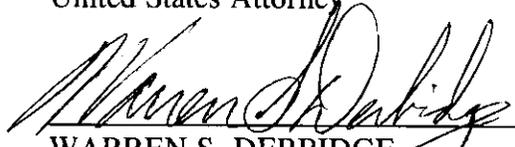
sale of its name does not alter that fact. The buyers would not have authority to act for the corporation, only the Chapter 7 trustee has authority to act for the corporation. Individuals such as the buyers in this case, cannot purport to be a corporation without actually complying with the State of Idaho's requirements in Idaho Code Section 30 for registering as a corporation. Moreover, sale of the corporation's name would violate Idaho Code Section 30-1-401.

For the above reasons, the Department of Health and Human Services objects to the Trustee's sale, and requests the Court not to approve it.

Dated this <sup>9<sup>th</sup></sup> Day of May, 2000.

Respectfully Submitted for  
The Department of Health and Human  
Services, Health Care Financing Administration,  
and Blue Cross of California

BETTY E. RICHARDSON  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Idaho, and that a copy of the foregoing OBJECTION TO AMENDED NOTICE OF SALE BY TRUSTEE was mailed, postage prepaid to all parties named below, this 9th day of May, 2000.

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