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Attorneys for Department of Health and Human Services

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

In Re:)	Case No. 98-02141
)	
COMMUNITY HOME HEALTH, INC.,)	
)	THE DEPARTMENT OF HEALTH
)	AND HUMAN SERVICES NOTICE
)	OF OBJECTION TO SALE BY
)	TRUSTEE
Debtor.)	

The Department of Health and Human Services, Health Care Financing Administration (HCFA), by and through its attorney, Warren S. Derbidge, Assistant United States Attorney for the District of Idaho, 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 Notice of Sale by Trustee dated June 24, 1999.

HCFA has four objections: (1) the Trustee cannot sell a cause of

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action against Medicare; (2) the Trustee cannot sell the right to Medicare payments; (3) the Trustee cannot sell the right to Medicare payments free and clear of HCFA's right to recoup any overpayments from such payments; and (4) the Kaiser partnership could not pursue any appeals against Medicare.

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 or employee thereof shall be brought under sections 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 (9th 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 (9th 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).

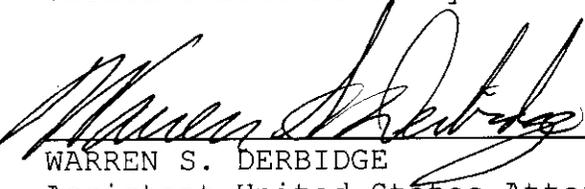
4. The Kaiser Partnership is not a Medicare Provider, and Could Not Pursue Any Medicare Appeals to the PRRB for Community Home Health, Inc..

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

Dated this 2nd day of July, 1999.

BETTY E. RICHARDSON
United States Attorney

By: _____


WARREN S. DERBIDGE
Assistant United States Attorney

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 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES NOTICE OF OBJECTION TO SALE BY TRUSTEE was mailed, postage prepaid to all parties named below, this 2nd day of July, 1999.

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