



## Client Alert

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### CMS's Moratorium On Establishing LTCHs Expires

Long-term care hospitals (LTCHs) furnish extended medical and rehabilitative care to individuals with clinically complex problems, such as multiple acute or chronic conditions, that need hospital-level care for relatively extended periods. For the past five years, the Centers for Medicare & Medicaid Services (CMS) held a moratorium on the establishment of such hospital facilities in the United States. More specifically, the LTCH moratorium prevented, with certain exceptions, the establishment of new LTCHs, increasing existing LTCHs' number of certified beds, or the establishment of a satellite by an existing LTCH. The moratorium initially commenced on December 29, 2007 as a three-year moratorium (until Dec. 29, 2010) under Section 114(d) of the Medicare, Medicaid and SCHIP Extension Act of 2007. It was subsequently extended for two years until December 29, 2012 by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act). On December 29, 2012, CMS's moratorium on the establishment of new LTCHs expired.

The expiration of the five-year moratorium is good news for health care providers who have been prevented from establishing LTCHs during that time period. However, these organizations should be aware of CMS's authority to impose an administrative moratorium on the enrollment of new Medicare providers and supplies. Under Section 3106 of the Affordable Care Act, CMS has the power to impose an administrative moratorium on the enrollment of new providers of services and suppliers if it determines such moratorium is necessary to prevent or combat fraud, waste, or abuse. Factors in determining whether to impose such a moratorium include whether a state Medicaid program has declared a moratorium on a particular provider or supplier type and whether a rapid increase in enrollment within a given provider or supplier category has occurred or is likely to occur. In other words, CMS has the authority to impose a moratorium on the enrollment of new Medicare providers and suppliers of a specific type in a particular geographic area. Therefore, an organization that has waited five years to establish an LTCH should conduct its due diligence on the need for such services in a particular geographic area and should also contact CMS as quickly as possible in submitting their provider enrollment applications because a potential CMS administrative moratorium will not affect an approved enrollment application.

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