



New Medicare Enrollments Temporarily Halted for Home Health Agencies and Ambulance Suppliers in Various Counties of Six States

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On February 4, 2014, the Centers for Medicare & Medicaid Services (CMS) announced in the *Federal Register*¹ that it is exercising its authority under 42 C.F.R. § 424.570 to impose new and extended moratoria on initial enrollments in Medicare, Medicaid and Children's Health Insurance Program (CHIP) for home health agencies (HHAs) and ambulance suppliers in various counties in six states that it identified as posing a significant risk for fraud, waste, and abuse. The moratoria retroactively went into effect on January 30, 2014 and halted all new Medicare enrollments for HHAs and ambulance suppliers in the affected counties for at least six months (*until at least August 5, 2014*). But, CMS may extend the restrictions for additional six month period(s), as it deems necessary to further prevent fraud, waste, and abuse.

Under 42 C.F.R. § 424.570, CMS is authorized to impose a temporary moratorium to prevent new providers and suppliers of a particular type, located in a common geographic area from enrolling in Medicare or establishing new practice locations. CMS may impose such a moratorium on any location and any provider/supplier category it identifies as posing a significant risk for fraud, waste, or abuse, based on its review of gathered data and identified trends. The law identifies the following as trends associated with fraud, waste, and abuse that CMS may cite to halt new enrollments:

1. The location or category has a highly disproportionate number of providers/ suppliers relative to the number of beneficiaries;
2. The geographic area experienced a rapid increase in enrollment applications within a particular category of providers/suppliers;
3. A state Medicaid program imposed a moratorium on a group of Medicaid providers/suppliers that are also eligible to enroll in Medicare;
4. A state has imposed a moratorium on enrollment in a particular geographic area or on a particular provider or supplier type or both; or
5. CMS, in consultation with the Department of Health and Human Services's Office of Inspector General, the Department of Justice, or both, and with the approval of the CMS Administrator identifies a particular provider or supplier type or a particular geographic area as having a significant potential for fraud, waste or abuse.

In the notice published on February 4th, CMS cited the 2nd and 5th trends listed above as justifications for imposing the below listed moratoria.

Moratoria Locations For Home Health Providers:

CMS imposed a new temporary moratorium, halting initial Medicare enrollments of HHAs, in the following areas:

- **Florida**—Broward County, City of Ft. Lauderdale.

¹ (79 Fed. Reg. 6,475 (Feb. 4, 2014)).

- **Michigan**—Counties of: Wayne, Macomb, Monroe, Oakland, and Washtenaw. City of Detroit.
- **Texas**—Counties of: Harris, Brazoria, Chambers, Ft. Bend, Galveston, Liberty, Montgomery, Waller, Dallas, Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant. City of Houston, City of Dallas.

CMS extended a temporary six-month moratorium—initiated in the July 13, 2013 *Federal Register* (78 Fed. Reg. 46,340)—by an additional six months for the following areas:

- **Florida**—Miami Dade County and Monroe County.
- **Illinois**—Counties of: Cook, DuPage, Kane, Lake, McHenry, and Will. City of Chicago.

Moratoria Locations for Ambulance Suppliers:

CMS imposed a new temporary moratorium halting initial Medicare enrollments of ambulance suppliers located in the following areas:

- **New Jersey**—Counties of: Burlington, Camden, and Gloucester.
- **Pennsylvania**—Counties of: Philadelphia, Bucks, Delaware, and Montgomery. City of Philadelphia.

CMS extended a temporary six-month moratorium—initiated in the July 13, 2013 *Federal Register* (78 Fed. Reg. 46,340)—by an additional six months for the following areas:

- **Texas**—Counties of: Harris, Brazoria, Chambers, Fort Bend, Galveston, Montgomery, and Waller.

Implications of the Moratoria:

The moratoria will have broad, sweeping implications for both new and established HHAs and ambulance suppliers. Since the moratoria suspends the processing of all Medicare enrollment applications for these provider/supplier types, no new businesses will be able to secure Medicare numbers to enter these business lines, and established businesses will not be able to expand operations. Medicare contractors are directed to deny any new Medicare enrollment applications and refund application fees for all applications submitted by affected providers/suppliers on or after January 30, 2014.

Further, federal law requires the Medicaid and CHIP programs in the affected states to impose parallel moratoria. HHAs and ambulance suppliers in areas covered by the moratoria will be unable to enroll in Medicaid and CHIP during the moratoria. Specifically, Section 6401(b) of the Affordable Care Act revised section 1902(kk)(4) of the Social Security Act to require states to “comply with any moratorium imposed by CMS, unless the state determines that the imposition of such a moratorium would adversely impact Medicaid beneficiaries’ access to care.” Section 6401(c) of the Affordable Care Act amended section 2107(e)(1) of the Social Security Act in a similar fashion to extend the moratoria to CHIP enrollments. As with Medicare, State Medicaid agencies are directed to deny enrollment applications and refund application fees. It remains unclear whether states may unilaterally reinstate Medicaid/CHIP enrollment privileges if beneficiaries experience difficulty accessing these services.

Pursuant to 42 C.F.R. § 424.570(a), the temporary moratoria do not apply to, and will not prevent processing of, applications submitted due to changes in practice location or changes in provider/supplier information (i.e., phone numbers, addresses or changes in ownership (except changes in ownership of HHAs that would require an initial enrollment under 42 C.F.R. § 424.550)). This statute states “[u]nless an exception in (b)(2) of this section applies, if there is a change in majority ownership of a home health agency by sale (including asset sales, stock transfers, mergers, and consolidations) within 36 months after the effective date of the HHA’s initial enrollment in Medicare or within 36 months after the HHA’s most recent change in majority ownership, the provider agreement and Medicare billing privileges do not convey to the new owner.” “The prospective provider/owner of the HHA must instead: (i) Enroll in the Medicare program

as a new (initial) HHA under the provisions of §424.510 of this subpart [and] (ii) Obtain a State survey or an accreditation from an approved accreditation organization.”

The regulations state that the temporary moratoria will also not halt the processing of any enrollment application that a CMS contractor has already approved but not yet entered into PECOS at the time the moratorium was imposed. However, CMS’ guidance leaves it unclear whether “the time the moratorium was imposed” is February 4, 2014 or January 30, 2014.

CMS has indicated that it will continue to analyze its gathered data and reconsider the moratoria in six months. If one or more of the moratoria are extended, it will be announced by publication in the *Federal Register*.

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