

# PUBLICATION

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## CMS Lifts Temporary Moratorium on Emergency Ground Ambulance Suppliers but Extends and Expands Other Moratoria [Ober|Kaler]

2016

On July 29, 2016, CMS announced that it is lifting a temporary moratorium on Medicare Part B, Medicaid, and Children's Health Insurance Program (CHIP) emergency ambulance suppliers, but extending and expanding similar moratoria on *non-emergency* ambulance suppliers as well as new Home Health Agencies (HHAs) in other locations. See [81 FR 51120 \[PDF\]](#). Such moratoria remain a proactive tool within CMS's broad powers to tackle fraud, waste, and abuse among particular provider or supplier types, or with respect to particular geographic locations.

Before implementing a moratorium, CMS considers both qualitative and quantitative factors in search of potentially elevated risks of fraud, waste, or abuse, in coordination with law enforcement, and confirms such determinations through additional data analysis from time to time. Because fraud schemes are migratory and transitory in nature, CMS periodically revisits the activities of various types of suppliers and providers in their respective geographic locations of operation, and may implement, eliminate, extend, or expand moratoria as needed. Since 2011, using these methods, CMS has enforced a moratorium preventing the enrollment of new HHAs in the Chicago and Miami metropolitan areas, as well as a moratorium preventing new Part B ground ambulance suppliers in the Houston area. At various intervals in 2013 and 2014, CMS extended and expanded these existing moratoria to include HHAs in the metro areas of Fort Lauderdale, Detroit, Houston, and Dallas, and Part B ground ambulance suppliers in metro Philadelphia and nearby New Jersey counties. These moratoria have been extended in six-month intervals since that time.

### Part B Emergency Ground Ambulance Moratorium Lifted

Effective July 29, 2016, based on its continued analysis of the subject providers, suppliers, and geographic locations, CMS will not extend the moratorium on the new enrollment of Part B emergency ground ambulance suppliers in any geographic locations in the states of New Jersey, Pennsylvania, or Texas. CMS found that the risk of fraud, waste, and abuse relates primarily to *non-emergency* ground ambulance services, and that continuing the moratorium for emergency ambulance services might create access to care issues. The termination of this moratorium also applies to Medicaid and CHIP suppliers. Still, any suppliers of such emergency ground ambulance services that enroll within six months of July 29, 2016 "will be included in the 'high' risk screening category" provided in 42 C.F.R. §424.518(c)(3). Further, "[n]ew emergency ambulance suppliers that furnish both emergency and *non-emergency* services will only be able to bill for emergency transportation services."

### HHA and *Non-Emergency* Ground Ambulance Moratoria Extended and Expanded

Conversely, citing a continued "significant potential for fraud, waste, and abuse," CMS will extend and expand the moratorium on the enrollment of new HHAs in all counties of Florida, Illinois, Michigan, and Texas. Additionally, CMS will extend and expand the moratorium on the enrollment of new *non-emergency* ground ambulance suppliers in all counties of Texas, Pennsylvania and New Jersey. Previously, the moratoria applied only to certain counties within those states, but CMS found that some providers and suppliers circumvented

the moratoria by locating outside of the geographic area to escape the ban. Thus, CMS will implement a statewide expansion of the moratoria.

These six-month extensions and expansions also apply to Medicaid and CHIP HHAs and *non-emergency* ground ambulance suppliers in the identified states. Thus, no new HHAs will be enrolled into Medicare, Medicaid, or CHIP with a practice in Florida, Illinois, Michigan, or Texas unless the application has already been approved as of July 29, 2016. Similarly, no new Part B *non-emergency* ground ambulance supplier will be enrolled into Medicare, Medicaid, or CHIP with a practice location in Texas, New Jersey, or Pennsylvania unless the application has already been approved as of July 29, 2016.

## **Ober|Kaler's Comments**

CMS's recognition of the difference between emergency and *non-emergency* ground ambulance services is an important step in chipping away at the global moratoria on new ambulance services in the states identified above. Still, even new emergency ground ambulance suppliers who are permitted to apply should expect heightened scrutiny of their applications as "high risk," for a period of six months, and no new non-emergency ambulance suppliers will be permitted in those states following the extension and expansion of the ban. New HHAs, too, must await the next six-month interval in the hopes that CMS's position will change regarding the perceived risk of fraud, waste, or abuse for those suppliers and providers in the expanded geographic areas.