

PUBLICATION

Medicare Enrollment Moratoria: Implications for Service Expansion and Certain Transactions [Ober|Kaler]

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One of the provisions of the Affordable Care Act provided CMS with the authority to impose a temporary enrollment moratorium for a particular type of provider or supplier if determined to be necessary to combat fraud and abuse. CMS has been under scrutiny by Congress and the OIG for not using this important tool. Refer to the [October 25, 2011 letter](#) from Senators Hatch and Grassley (highlighted DOJ activities in seven states identified as high risk areas for fraud including California, Florida, Illinois, Louisiana, Michigan, New York, and Texas), the [March 28, 2013 letter](#) from Senators Hatch, Grassley, and Coburn (urging CMS to utilize this fraud preventing authority especially in light of evidence from OIG investigations demonstrating this tool would impede Medicare fraud), and the April 2012 GAO report entitled "[Medicare Program Integrity -- CMS Continues Efforts to Strengthen the Screening of Providers and Suppliers](#)" (requesting CMS use all of the new authorities granted to it through the PPACA provisions).

CMS published Medicare regulations at 42 C.F.R. § 424.570 and Medicaid regulations at 42 C.F.R. § 455.470 in March 2011, which set forth the criteria for use of this enforcement strategy. As a preliminary matter, CMS must announce any planned Medicare moratoria in the Federal Register along with its rationale for why it is needed.

CMS did just that when it published a July 31st notice, "[Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of Temporary Moratoria on Enrollment of Ambulance Suppliers and Providers and Home Health Agencies in Designated Geographic Areas](#)," announcing a moratorium for HHAs in the Miami and Chicago areas and one for ambulance suppliers in Houston, effective as of July 30, 2013. Among the criteria that led to establishing these moratoria, CMS noted that each area is an identified Strike Force city, has a high number of providers per 10,000 Medicare beneficiaries, had a compounded annual growth rate of new providers or suppliers, and a high "churn rate" (i.e., the rate of providers or suppliers entering and exiting the Medicare program). Medicare was particularly interested in curtailing "churning," expressing concern with providers or suppliers that incur a substantial debt, exit the Medicare program, and then attempt to reenroll through another business identity.

Under the regulations, the relocation of an existing practice location and ownership changes generally would not be affected by a moratorium; however, that is not the case in an HHA ownership change where the "36-month rule" is implicated. In that situation, the entity acquiring the HHA would not be able to obtain Medicare enrollment until after the moratorium is lifted. To explain the nuances of the moratorium for HHA providers, CMS published a [Survey and Certification Letter \(S&C: 13-53-HHA\)](#), which also includes the list of zip codes included under both the HHA and ambulance enrollment moratoria. With regard to ambulance enrollments, the moratorium will not apply to provider-based Medicare enrollees. The provider-based exception, however, was not extended to ambulance suppliers enrolling in Medicaid.

Under the imposed moratoria, any application for a new initial enrollment or a request for a branch or practice location addition that had not been approved by the July 30th effective date will be denied. Although the enrollment rules provide appeal rights to a denied enrollment, when the denial is due to a moratorium the scope of the appeal is limited to determining whether the moratorium applies to the appealing provider or supplier.

Ober|Kaler's Comments

When planning for service expansion, advance filing of the Medicare enrollment application is recommended to avoid having a newly implemented moratorium affect the ability to meet the business development objectives. Additionally, the lack of any meaningful advance notice has implications for pending HHA transactions, where the HHA is subject to the 36-month rule and is located in an identified high fraud area for which a moratorium may be imposed with little to no notice.