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Enforcement

CMS Announces First Temporary Moratoria For Medicare Provider, Supplier Enrollment

The Centers for Medicare & Medicaid Services July 26 issued its first temporary moratoria for Medicare, Medicaid, and Children's Health Insurance Program (CHIP) provider and supplier enrollments.

Industry leaders and key lawmakers told BNA they generally supported the moratoria, which took effect July 30.

New home health agencies in Miami-Dade and Monroe counties in Florida, and Cook, DuPage, Kane, Lake, McHenry, and Will counties in Illinois, and new ambulance providers and suppliers in Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller counties in Texas, have been barred from enrollment for six months. The areas are considered at high risk of fraud as determined by Medicare Fraud Strike Forces.

Existing providers and suppliers will be allowed to continue providing care, and CMS has the option to either lift the moratoria at the end of the six-month period or extend it for another six months.

The CMS notice will be published in the July 31 *Federal Register*.

''While maintaining patients' access to care, we are putting would-be fraudsters on notice that we will find and stop them before they can attempt to bill Medicare, Medicaid and CHIP,'' CMS Administrator Marilyn Tavenner said in a July 26 statement.

''The limited geographic reach of the moratoria, and the limited number of providers impacted, may not quell the congressional demands for further moratoria.''

—Ellyn Sternfield, Mintz Levin, Washington

Section 6401(a) of the Affordable Care Act authorizes the secretary of health and human services to impose temporary moratoria to combat fraud, waste, or abuse in federal health care programs.

A final rule published in February 2011 said CMS ''may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type or particular geographic areas or both'' (15 HFRA 68, 1/26/11).

Maria Bianchi, executive vice president of the American Ambulance Association, told BNA July 30 that her organization was supportive of the moratoria, and had actually recommended that CMS make use of it.

''We can certainly see this initiative extending beyond these three areas if necessary and as a useful tool to combat fraud and abuse with all Medicare providers and suppliers,'' Bianchi said.

The American Ambulance Association represents ambulance providers across the country.

Ineffective Fraud-Fighting Tool. While the temporary moratoria may help reduce an oversaturated provider base, they will not reduce Medicare fraud, Kirk Ogrosky, an attorney with Arnold & Porter LLP and former head of criminal enforcement for the Department of Justice, told BNA July 30.

''Moratoria are ineffective as fraud fighting tools because criminals do not operate within the bounds of CMS regulations,'' Ogrosky said.

Ogrosky said criminals will instead buy and trade existing Medicare provider numbers in high fraud areas without alerting CMS contractors.

He also said the moratoria will result in criminals opening other types of providers, including durable medical equipment (DME) companies, outpatient rehabilitation facilities, and community mental health centers.

Ogrosky said CMS has known that home health agencies and ambulance providers have been involved in high levels of fraud in areas like Miami, Houston, and Chicago since 2009, and ''ceasing the issuance of new provider numbers in 2013, or even ending the practice of allowing the transfer of existing numbers, will not impact the rate of fraud.''

Lack of DME Providers. Ellyn Sternfield, an attorney with Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Washington, told BNA July 30 that she was surprised that the temporary moratoria did not include DME providers.

''The limited geographic reach of the moratoria, and the limited number of providers impacted, may not quell the congressional demands for further moratoria,'' Sternfield said.

Sternfield also said it was no accident that the moratoria all occurred in areas where Medicare Fraud Strike Force teams have been active.

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As for the future, Sternfield said CMS will be balancing its moratoria authority with concerns over patient access to care.

''Whether or not there end up being documented concerns about beneficiaries' access to care from these moratoria will likely dictate whether we see more moratoria in the future,'' Sternfield said.

Congressional Reaction. Sen. Orrin G. Hatch (R-Utah), ranking member of the Senate Finance Committee, said he was pleased with the use of the temporary moratoria, even though he said it has taken CMS three years to do so.

''With CMS finally acting to crack down on fraud in high-risk areas like Miami and Houston, America's seniors will be better protected from those wishing to game the system putting their care in jeopardy, while helping shore up Medicare's finances,'' Hatch said in a statement.

Sen. Tom Coburn (R-Okla.) also said he was pleased with the temporary moratoria. ''I am glad to see CMS follow recommendations from the Inspector General, as well as myself and colleagues, that they should use this targeted tool to protect taxpayers and beneficiaries,'' Coburn said in a statement.

Hatch and Coburn, along with Sen. Chuck Grassley (R-Iowa), have sent three letters to HHS Secretary Kathleen Sebelius over the past few years, asking for information on why no temporary moratoria had been issued (17 HFRA 303, 4/3/13).

The Partnership for Quality Home Healthcare, a coalition of home health providers, applauded the imposition of the temporary moratoria.

''Targeted reforms are needed to strengthen the Medicare program, protect patients and defend taxpayers from fraudulent activities, which we believe is a better approach to Medicare reform than deep funding cuts and the re-imposition of a home health copay,'' Eric Berger, chief executive officer of the Partnership, said in a July 26 statement.

Reasons for Moratoria. CMS based the temporary moratoria decisions on data analyses in the affected counties.

For example, CMS said Miami-Dade County was one of 26 counties in the country with more than 200,000 Medicare beneficiaries.

According to the data, Miami-Dade averaged 38 home health agencies per 100,000 Medicare fee-for-service beneficiaries. In comparison, the remaining 25 counties, with more than 200,000 Medicare beneficiaries, averaged two home health agencies per 100,000 Medicare beneficiaries.

In addition, home health agencies in Miami-Dade received average Medicare payments of $10,000 per home health patient in 2012, compared with average Medicare payments of $6,000 in the remaining 25 counties.

As for Medicaid, CMS data analysis found that Miami-Dade contains 16 percent of Florida Medicaid home health beneficiaries but has 45 percent of all home health providers in the state.

Data analysis for the six counties in Illinois also revealed a high rate of home health use, with the six counties averaging $3,000 in Medicaid payments for home health users in 2010, ''or 57 percent more than the $1,728 per home health user that Medicaid spent in the state as a whole,'' the CMS notice said.

In the eight Texas counties, the ratio of ambulance providers to Medicaid beneficiaries was twice as high as in the rest of the state, CMS said.

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The CMS notice is at http://op.bna.com/hl.nsf/r?Open=jswn-99ys42.

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