

Fraud and Abuse in Healthcare: CMS Extends Moratorium on the Certification of New Home Health Agencies in Certain Areas

On February 2, 2016, the *Centers for Medicare and Medicaid Services* (CMS) announced that the agency is extending the temporary moratorium on certifying Medicare *home health agencies* (HHA) and Medicare Part B ground ambulance suppliers in select metropolitan areas across the U.S., until July 29, 2016.¹ The moratorium targets certain counties, viewed by CMS as areas with high rates of healthcare fraud and abuse, in six (6) states, i.e.: Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey.² Since CMS initially instituted the moratorium on July 30, 2013, for select counties in Florida, Texas, and Illinois, CMS has further extended and broadened the moratorium to include additional counties and states on five different instances: January 30, 2014, August 1, 2014, February 2, 2015, July 28, 2015, and January 29, 2016.³ This moratorium reflects the continued scrutiny of healthcare fraud and abuse by government regulators, which may influence the operations of healthcare providers.⁴ This *Health Capital Topics* article will detail the history of CMS's utilization of the moratorium on provider certification, and how this regulatory tool reflects the overall trend of continued scrutiny related to healthcare fraud and abuse.

As a result of the *Patient Protection and Affordable Care Act* (ACA), Congress bestowed CMS with increased authority to combat fraud, waste, and abuse in Medicare, Medicaid, and the *Children's Health Insurance Program* (CHIP).⁵ With the addition of Section 1866(j)(7) to the Social Security Act, the Secretary of the *Department of Health and Human Services* (HHS) now holds the authority to issue temporary moratoria on the enrollment of new providers of Medicare, Medicaid, and CHIP healthcare services, requiring all states to comply unless it is deemed by the state that the moratorium restricts access to care for the Medicaid population.⁶ In collaboration with the *Department of Health and Human Services Office of Inspector General*, (HHS-OIG) and the *Department of Justice* (DOJ), CMS utilizes the Medicare Fraud Strike Force teams within the *Health Care Fraud Prevention and Enforcement Action Teams* (HEAT) to discover, investigate, and eliminate perpetration of healthcare fraud and abuse.⁷ Through varying data analysis techniques, regulators search for high billing levels in healthcare fraud hotspots. In pursuit of preventing healthcare fraud, "CMS identified all counties across the

*nation with 200,000 or more Medicare beneficiaries" and tested for varying metrics believed "to be key indicators of potential fraud risk."*⁸ For example, investigators identified "the number of providers or suppliers per 10,000 Medicare fee-for-service (FFS) beneficiaries and the compounded annual growth rate in provider or supplier enrollments,"⁹ and also referenced the "2012 FFS Medicare payments to providers and suppliers in the target locations based on the average amount spent per beneficiary who used services."¹⁰

After the initial moratorium in 2013, CMS and HHS-OIG discovered that fraud schemes "replicate rapidly within communities," with healthcare fraud migrating and adapting as law enforcement and government regulators target a specific fraud scheme.¹¹ For example, in Miami-Dade County, Florida, CMS analysis discovered that there were "37.6 home health agencies per 10,000 Medicare fee-for-service (FFS) beneficiaries" compared to the "1.8 home health agencies [per 10,000 Medicare FFS beneficiaries] in 25 comparison counties."¹² Additionally, Miami-Dade County HHAs received an average reimbursement of \$10,000 per Medicare home health beneficiary in 2012, in contrast to an average of \$6,000 per Medicare home health beneficiary in 25 comparison counties.¹³ Based on these findings, CMS decided to have the moratorium put into place in three metropolitan areas, which includes: (1) Miami, (2) Chicago and, (3) Houston.¹⁴

In general, access to care does not appear to be impacted with the extension of the moratorium.¹⁵ "CMS reviewed its own data regarding the number of providers and suppliers in the target and surrounding counties" and did not identify any potential issues related to access to healthcare services.¹⁶ Additionally, an independent congressional agency tasked, among other things, with monitoring Medicare beneficiaries' access to care, the *Medicare Payment Advisory Commission* (MedPAC), produced a report that suggested access would not be impacted by the moratorium.¹⁷ In fact, the March 2013 report by MedPAC "recommended that CMS use its authorities" to identify providers with fraudulent or risky behavior.¹⁸ MedPAC opined that a moratorium on the establishment of new HHAs would prevent new agencies from entering saturated markets.¹⁹ Additionally, the National

Association for Home Care & Hospice, which represents 33,000 home care and hospice organizations, lobbied to grant CMS the moratorium authority and supported the various extensions and expansion of the moratorium, stating that the moratorium is a “*necessary and appropriate measure*” to combat fraud, abuse, and waste in home health.²⁰ The Partnership for Quality Home Healthcare, a coalition of home health providers, also supported the moratorium after their analysis of Medicare claims data showed “*that nearly 90 percent of all aberrant Medicare home health spending was occurring in a small number of counties in just a few states.*”²¹

Providers should be cognizant of the increased regulatory scrutiny against fraud, waste, and abuse in the U.S. healthcare delivery system. According to a 2012 study published in JAMA, the total waste on the U.S. system is estimated at \$558 billion per year.²² Further, data from the *Federal Bureau of Investigation* (FBI) and CMS demonstrates that HHA providers who are intending to defraud payers and patients often inflate “*HHA diabetic episodes to create outlier payments which are in excess of the national 60-day episode payments,*” potentially costing Medicare \$1 billion in 2009 alone.²³ Providers should be increasingly vigilant, as this scrutiny of HHAs is in line with heightened scrutiny in other areas of the healthcare industry, such as physician compensation and tax-exempt status.

- 1 “Medicare, Medicaid, and Children’s Health Insurance Programs: Announcement of the Extended Temporary Moratoria on Enrollment of Ground Ambulance Suppliers and Home Health Agencies in Designated Geographic Locations” Federal Register Vol. 81, No. 21 (February 2, 2016) p. 5444-45.
- 2 “Extension of Provider Enrollment Moratoria for Home Health Agencies and Part B Ambulance Suppliers” Centers for Medicare and Medicaid Services, February 2, 2016, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1425.pdf> (Accessed 3/28/16).
- 3 Federal Register, Vol. 81, No. 21 (February 2, 2016) p. 5445; “Medicare, Medicaid, and Children’s Health Insurance Programs: Announcement of New and Extended Temporary Moratoria on Enrollment of Ambulances and Home Health Agencies in Designated Geographic Locations” Federal Register

- Vol. 79, No. 23 (February 4, 2014) p. 6476.
- 4 “CMS extends moratorium on new home health agencies in some cities” By Lisa Schencker, Modern Healthcare, July 24, 2015, <http://www.modernhealthcare.com/article/20150724/NEWS/150729882> (Accessed 5/10/2016); “The \$272 billion swindle: Why thieves love America’s health-care system” The Economist, May 31, 2014, <http://www.economist.com/news/united-states/21603078-why-thieves-love-americas-health-care-system-272-billion-swindle> (Accessed 5/24/2016).
- 5 “Medicare, Medicaid, and Children’s Health Insurance Programs: Announcement of Temporary Moratoria on Enrollment of Ambulances, Suppliers and Home Health Agencies in Designated Geographic Locations” Federal Register Vol. 78, No. 147 (July 31, 2013) p. 46340.
- 6 *Ibid.*
- 7 *Ibid.*, p. 46341.
- 8 Federal Register, Vol. 79, No. 23 (February 4, 2014) p. 6477.
- 9 *Ibid.*
- 10 *Ibid.*
- 11 *Ibid.*
- 12 “Temporary Enrollment Moratorium to Combat Fraud Will Expire Soon” By Nancy Aldrich and Bill Benson, Senior Medicare Patrol, November 2013, http://www.smpresource.org/Handler.ashx?Item_ID=477FD313-4A2C-4209-9E3A-8E2239CA273D (Accessed 3/28/16).
- 13 *Ibid.*
- 14 *Ibid.*
- 15 Federal Register, Vol. 78, No. 147 (July 31, 2013) p. 46341-46342; Federal Register, Vol. 79, No. 23 (February 4, 2014) p. 6479; Federal Register, Vol. 81, No. 21 (February 2, 2016) p. 5445.
- 16 Federal Register, Vol. 78, No. 147 (July 31, 2013) p. 46342.
- 17 *Ibid.*
- 18 *Ibid.*
- 19 *Ibid.*; “Report to the Congress: Medicare Payment Policy” Medicare Payment Advisory Commission, March 2013, http://medpac.gov/documents/reports/mar13_entirereport.pdf (Accessed 5/6/2016), p. 193.
- 20 “CMS Extends Medicare Home Health Agency Moratoria Another Six Months” National Association for Home Care & Hospice, July 29, 2014, http://www.nahc.org/NAHCReport/nr140729_2/ (Accessed 3/28/16); “About NAHC” National Association for Home Care & Hospice, <http://www.nahc.org/about/> (Accessed 4/5/16).
- 21 Aldrich and Benson, November 2013.
- 22 “Eliminating Waste in US Health Care” By Donald M. Berwick and Andrew D. Hackbarth, Journal of the American Medical Association, Vol. 307, No. 14 (2012), p. 1514.
- 23 “2009 Financial Crimes Report” Federal Bureau of Investigation, 2009, <https://www.fbi.gov/stats-services/publications/financial-crimes-report-2009> (Accessed 4/4/16).



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