



January 31, 2014

## *CMS Moratorium Ices Home Health Agencies and Ambulance Companies in HEAT Locations*

In another effort to combat fraud and abuse in federal healthcare programs, on January 30, 2014, the U.S. Department of Health & Human Services, Centers for Medicare and Medicaid Services (“CMS”), issued a new temporary **moratorium** freezing enrollment of Home Health Agencies (“HHA”) and Ambulance Suppliers in federal healthcare programs, including Medicare, Medicaid, and CHIP. CMS also extended previously issued restrictions. This action was taken pursuant to authority granted in the Affordable Care Act and its enabling regulations. Under the moratoria, new enrollment in federal healthcare programs for HHAs and Ambulance Suppliers are frozen temporarily in certain geographic areas that CMS determined, based on data analysis and consultation with federal law enforcement agencies (including the Department of Justice and the Office of Inspector General), pose a high risk of fraud, abuse, and waste. Southeast Michigan is included in the action affecting HHAs.

### **Home Health Agencies Moratorium.**

Under regulations at 42 CFR §§455.470 and 457.990, these moratoria are applicable to the enrollment of HHAs in Medicare, Medicaid, and CHIP. The four geographic areas to which this new HHA moratoria applies are:

- Michigan: Wayne County (Detroit) and the surrounding counties of Oakland, Macomb, Monroe, and Washtenaw
- Florida: Broward County (Ft. Lauderdale)
- Texas: Dallas County and the surrounding counties of Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant
- Texas: Harris County (Houston) the surrounding counties of Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller

In addition to the new HHA moratorium, CMS extended the moratorium issued in July 2013 on certain areas around Miami and Chicago. The affected areas are in or near HEAT Medicare Fraud Strike Force locations and consistently rank near the top for the identified metrics for waste, fraud, and abuse in 2012.

Once imposed, a provider cannot challenge the imposition of the moratorium judicially, but may challenge the denial of enrollment through the administrative appeal procedures set forth in 42 CFR part 498. Any such challenge, however, is limited solely to whether the temporary moratorium applies to the provider or supplier appealing the denial.

The moratorium has some exceptions. Notably, it does not apply to providers who are currently enrolled and merely change their existing practice location or other information regarding their current practice, such as phone number, address, or changes in ownership that do not require initial enrollment by the HHA. Also excluded from its reach are HHAs whose enrollment application has already been approved by a CMS contractor, but has not yet been entered into the Provider Enrollment Chain and Ownership System (PECOS).

### **Ambulance Supplier Moratorium**

The moratorium on new Ambulance Supplier enrollment, like that for the HHAs, was based on CMS' analysis of qualitative and quantitative data and determination that there is a significant amount of fraud, waste, and abuse by Ambulance suppliers in this region. The moratorium also has some exceptions, and it does not extend to provider-based suppliers (i.e., ambulance suppliers that are owned by a hospital, skilled nursing facilities, hospice, or HHA that are not required to be separately enrolled in Medicare Part B). Nor does the moratorium apply to air ambulance suppliers seeking to enroll in Medicare, Medicaid, or CHIP. The new moratorium applies to Philadelphia County, PA, and six surrounding counties in Pennsylvania and New Jersey. CMS also extended the moratorium issued in July 2013 against new enrollment of Ambulance Suppliers in eight counties around Houston.

While the expected length of the freeze is six months, starting January 31, 2014, CMS has the ability to extend its impact an additional six months upon submission of another Notice in the Federal Register.

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Butzel Long attorneys have experience with HEAT Strike Force enforcement efforts in the Detroit area. Our attorneys have represented healthcare practitioners and providers who have been charged with Medicare and Medicaid fraud related to the provision of HHA services. We understand how disruptive such charges can be on medical practices and HHA operations, and we have worked not only in defending criminal charges, but also in vigorously assisting our clients in regulatory and civil litigation that often flows from allegations of fraud and abuse.

If you have questions regarding this moratorium, other matters involved HHAs or Ambulance providers, or other health care law matters generally, please contact your regular Butzel Long attorney, the authors of this alert, or any member of Butzel Long's Health Care Industry Group.

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