

New Home Health Agencies in Six States? Medicare Still Says No

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If you're looking to open a new Medicare home health agency in Florida, think again, and you can blame it on the high risk of fraud and abuse.

The Centers for Medicare & Medicaid Services extended temporary statewide moratoria on new home health agencies for six months in Florida and five other states—Illinois, Michigan, Texas, Pennsylvania, and New Jersey, according to a Jan. 29 notice.

Snapshot

- Medicare renews policy blocking new home health agencies in six states
- New agencies can't enroll in Medicare due to fraud concerns

The moratoria are designed to reduce fraud and abuse by limiting the number of participating providers, but questions have been raised as to the effectiveness of blocking Medicare or Medicaid enrollment for an entire provider category.

For example, the California Medicaid program barred the enrollment of new clinical laboratories for several years until 2015, and industry stakeholders said it had an adverse impact on access to genetic testing for California patients, Judith Waltz, a health-care attorney with Foley & Lardner LLP in San Francisco, told Bloomberg Law Jan. 29.

“Moratoria also skew the market for existing providers who want to sell their entities

as ongoing operations, since prospective providers can only get an enrollment with a continuing entity,” Waltz said, meaning that prospective providers may end up buying an operation that has significant issues, such as overpayments from the CMS for claims.

Existing providers can also sell their practice for a premium under a moratorium, Waltz said.

Roughly 3.5 million Medicare patients used home-health services in 2015, with payments for those services totaling \$18.1 billion, according to the CMS. More than 12,300 home-health agencies were enrolled in Medicare as of 2016. While national home-health companies such as Kindred Healthcare and Amedisys have operations in the six affected states, smaller home-health agencies can be caught up in the moratoria.

The CMS moratoria also cover enrollment for new Medicare Part B nonemergency ground ambulance providers and suppliers, and apply to enrollment in Medicaid and the Children's Health Insurance Program as well. The notice identified a high risk of fraud, waste, and abuse for home health agencies and nonemergency ambulance services in the six states.

The temporary enrollment moratoria were originally imposed in July 2013 and covered enrollment in several counties in Florida, Illinois, and Texas. They were expanded to counties in Michigan, Pennsylvania, and New Jersey in January 2014, and Medicare

made the enrollment bans statewide in all six states in July 2016.

Moratoria Metrics

Metrics are lacking for the moratoria, Waltz said, making it hard to assess whether the program has been a success. "It's impossible to tell if the moratoria really work because they are based on prevention and avoidance rather than recovery, so in essence it would require proving a negative to estimate the effectiveness," Waltz said.

Waltz said she hadn't seen any results indicating that Medicare spending was reduced in states with moratoria, which would theoretically happen due to a reduction in overall providers.

However, the overall number of home-health providers has changed very little since 2011, despite the moratoria, Debra A. McCurdy, a senior health policy analyst with Reed Smith LLP in McLean, Va., told Bloomberg Law Jan. 29.

McCurdy said there were 12,054 home-health agencies in 2011, compared with 12,313 in 2016. Medicare spending on home-health agencies has been relatively flat over the past few years, McCurdy said.

'Inelegant Solution'

The current moratoria force patients who were going to use home-health agencies or ambulance services for fraud schemes into other low-barrier sectors like outpatient rehab or durable medical equipment, Kirk Ogrosky, a healthcare attorney with Arnold & Porter Kay Scholer LLP and former head of criminal enforcement for the Department of Justice, told Bloomberg Law Jan. 29.

"It's an inelegant attempted solution to an obvious problem," Ogrosky said. Fraudsters aren't locked into a particular provider type but are just looking for a working Medicare provider number, he said.

The downside of freezing enrollment for home-health agencies and ambulance providers is that legitimate providers are banned from participating in Medicare, Ogrosky said.

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