



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 16-36-HHA

DATE: August 26 2016

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Extension and Expansion of the Provider Enrollment Home Health Agency (HHA) Moratoria

Memorandum Summary

- **Effective July 29, 2016:** The Centers for Medicare & Medicaid Services (CMS) extended the previous HHA moratoria to encompass the entire states of Illinois (IL), Florida (FL), Michigan (MI) and Texas (TX) for a period of six months.
- **Effective July 29, 2016:** No initial HHA Medicare surveys may be conducted in the above States and all activities on initial certification actions in progress at the State Survey Agency (SA) or Regional Office (RO) as of that date must cease. Any prospective HHA provider that had an initial application still in progress on July 29, 2016 and received an enrollment denial notification from the Medicare Administrative Contractor (MAC) must reapply as a new applicant once the moratorium is lifted.
- In conjunction with the extension of the moratoria, CMS will initiate a Provider Enrollment Moratoria Access Waiver Demonstration (PEWD) for HHAs in moratoria-designated geographic locations. These waivers will be evaluated by the Center for Program Integrity (CPI). Any waivers issued by CPI will be made on a case by case basis in response to access of care concerns. If a waiver is issued, CPI will notify the applicable SA and RO to confirm that a survey may be conducted within the moratorium area pursuant to the waiver.
- **SAs and ROs should refer all questions regarding the moratoria to the applicable MAC.**

Background

The Affordable Care Act provided CMS with new tools and resources to combat fraud, waste and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). In accordance with 42 CFR §424.570(c), CMS first used its moratoria authority on July 30, 2013.

In this instance, CMS acted to prevent enrollment of new HHAs in the Chicago, IL and Miami, FL areas. CMS exercised this authority again on January 30, 2014 when the existing moratoria were expanded to include HHAs in the metropolitan areas of Fort Lauderdale, FL; Detroit, MI; Dallas, TX; and Houston, TX. All the moratoria were extended again in July, 2015 and January, 2016.

HHA Moratoria Expanded Statewide

Effective July 29, 2016, CMS has extended and expanded the HHA moratoria to state-wide for the following States:

- Florida
- Illinois
- Michigan; and,
- Texas

Action: Survey and Certification

Accordingly, as of July 29, 2016, MACs will deny all initial HHA Provider Enrollment applications and all HHA applications for the addition of a practice location in the above listed States. Only those enrollment applications that were already entered into PECOS or those applications that had all review completed and were awaiting entry into PECOS will be completed. All other processing of initial HHA enrollment applications in the above listed States ceased as of July 29, 2016 for a period of six months.

All SA and RO activities associated with the processing of initial HHA applications or requests for the addition of an HHA Branch, within any of the above listed States, should have ceased as of July 29, 2016. This includes all HHA initial surveys, review of plans of correction for completed initial HHA surveys, submission of information for civil rights clearance on pending HHA initial surveys and preparation of Forms CMS-2007s for initial applications. The CPI is creating a list of all applications for initial HHA enrollment and all applications for the addition of a practice location in the moratoria areas which (although a Form CMS-2007 may have been issued to the MAC by an RO) did not have the enrollment process completed prior to the implementation of the State-wide moratoria. In these cases, the provider is not enrolled and is not eligible for Medicare payment.

However, the CCN and provider agreement may have already been forwarded to the provider by the RO. It will be necessary for the ROs to withdraw the CCN and provider agreement which may have been issued for all HHAs appearing on the above reference CPI list. The notification letter to the provider that the CCN and provider agreement are being withdrawn should state that, pursuant to MAC confirmation that the provider's enrollment was not completed prior to the implementation of the State-wide moratorium, the CCN and provider agreement are withdrawn and are no longer valid. The provider should also be informed in the letter that should they wish to re-apply for Medicare certification once the moratorium is lifted, it will be necessary for them to submit all new provider enrollment application materials and have a new survey conducted.

The CCNs which are withdrawn should be placed back into the queue for assignment with future initial certification actions. Initial applications which are impacted by the moratoria **may not** be

suspended and processed after the moratoria is lifted. All HHA providers impacted by the moratoria will be required to begin the initial application process over in its entirety once the moratorium is lifted. However, because the affected provider may be able to apply for a waiver (see below) the SAs/ROs should retain all pending initial application files for a minimum of 180 days and should not purge the initial application from ASPEN for that same time period.

The referenced HHA moratoria do not apply to:

- 1) Change of information for those HHAs already certified in the moratorium area (such as change of practice location address or telephone number;
- 2) Changes in ownership as defined by 42 CFR 489.18 for those HHAs already certified in the moratorium area, except when an initial enrollment would be required (i.e.: the new owner does not accept assignment of the liabilities of the old owner); and
- 3) HHAs that have been granted a waiver to the State-wide moratorium by the CPI through the Provider Enrollment Moratoria Access Waiver Demonstration (See below).

An HHA enrolled as of July 29, 2016 and operating an approved Branch within the Moratorium area as of that date, may relocate the Branch(s) within the Moratorium area and these requests should be reviewed using the current review/approval/denial process. An HHA within the Moratorium area **may not open a new Branch** within the Moratorium area. An HHA provider outside the Moratorium area that was already enrolled as of July 29, 2016 may not open a *new* Branch inside the Moratorium area but may move a Branch that was already approved as of July 29, 2016 into the Moratorium area. Since the later move would involve more than one SA, a reciprocal agreement would be necessary for survey and certification approval of the Branch move.

Provider Enrollment Moratoria Access Waiver Demonstration (PEWD)

In conjunction with the expansion of the moratoria, CMS is initiating a Provider Enrollment Moratoria Access Waiver Demonstration (PEWD) for HHAs in moratoria-designated geographic locations. The demonstration, will allow CMS to grant waivers to the state-wide moratoria on a case-by-case basis in response to validated access to care issues. All applications for waiver will be submitted to the applicable MAC and will be reviewed and processed by the CPI.

In the event that the CPI grants a waiver during the moratorium, the applicable SA and RO will be notified so that once the “approval recommended” notice is received from the MAC, the SA may proceed with the survey/certification process without concern that an error may have occurred.

Appeals

Since Survey and Certification is not denying initial certification or the addition of a practice location for any HHA provider in a moratoria areas, it is not required that appeal rights be provided by Survey and Certification. The survey actions have been *withdrawn* secondary to a denial issued by Provider Enrollment. In their denial letters, Provider Enrollment will offer any appeal rights that may be indicated.

Accrediting Organization Action (AO)

Approved AOs should not conduct HHA initial surveys, in the States listed above, for the purpose of recommending deemed status, until the moratoria are lifted. The HHAs in the moratoria areas may, at their discretion, engage an AO for the purpose of accreditation only. However, no deemed status recommendations will be accepted by the ROs from an AO during the moratoria unless the provider has been granted a PEWD waiver. It is the responsibility of the prospective provider to notify the AO of any approved waiver. The AO should verify that the SA/RO have received notification of the waiver approval and have received an “Approval Recommended” notice from the MAC before conducting the survey.

Provider Inquiries

All questions received by either the SA, RO or AO must be referred to the applicable MAC. Regardless of where the applicant was in the survey/certification process, all denials are enrollment denials and will be made by the MAC. Therefore, all provider inquiries should be addressed to the MAC. The SA or RO should not engage in conversations with HHA providers regarding either the moratoria implementation procedures or the impact of those procedures on their applications.

Effective Date: Immediately, as of July 29, 2016. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
David R. Wright

Attachment: Template Letter to Providers

cc: Survey and Certification Regional Office Management

Department of Health & Human Services
Centers for Medicare & Medicaid Services
[Your Letterhead]



Date

Provider Name
Provider Address

Dear Provider [Name]:

Effective July 29, 2016, CMS extended and expanded the Medicare enrollment moratoria on Home Health Agencies (HHA) state-wide for the States of Michigan, Florida and Texas. We are writing to inform you that, pursuant to confirmation from the Medicare Administrative Contractor (MAC) that your Medicare enrollment was not completed prior to the implementation of the State-wide moratorium. Therefore, the CMS Certification Number (Add CC Number) and associated provider agreement which we issued to you on (Add Date) are withdrawn and are no longer valid.

All questions you may have regarding the moratorium and the impact of the moratorium upon your Medicare enrollment application must be directed to your MAC. Should you wish to seek Medicare certification and enrollment again once the moratorium is lifted, please be advised that it will be necessary for you to submit a new Provider Enrollment application (CMS-855) and have a new survey conducted.

In conjunction with the expansion of the moratoria, CMS is initiating a Provider Enrollment Moratoria Access Waiver Demonstration (PEWD) for HHAs in Moratoria designated geographic locations. The demonstration will allow CMS to grant waivers to the State-wide moratoria on a case by case basis in response to validated access to care issues. For questions regarding the PEWD waiver please contact your MAC.

Sincerely,

Regional Office Point of Contact