



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-53-HHA

DATE: August 9, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Temporary Moratorium on Home Health Agency (HHA) Enrollment-
Metropolitan Areas of Miami and Chicago

Memorandum Summary

- **Temporary Moratorium** – On July 31, 2013 the Centers for Medicare & Medicaid Services (CMS) announced a temporary moratorium on Home Health Agency (HHA) enrollment in two geographic areas. Effective July 30, 2013, CMS will halt the enrollment of new HHA providers and HHA branch locations in the metropolitan areas of Miami, FL and Chicago, IL.
- **Length of Moratorium** - The moratorium will be in place for six months. Federal regulations allow CMS to lift the moratorium as necessary or to extend the moratorium for six month periods by notifying the public.
- **HHA Application Status** – Prospective HHA applications within the affected areas which were **not approved** prior to July 30, 2013 will be denied by the Medicare Administrative Contractor (MAC). Approved means that by 12:00 AM July 30, 2013 the initial certification survey was completed; the second MAC review was completed; the CMS Regional Office (RO) sent the tie-in notice to the MAC; the MAC performed a site visit and the MAC decided to switch the HHA's Provider Enrollment Chain Organization System (PECOS) record to an "approved" status.
- **State Survey Agency (SA)/Regional Office (RO) Review** – As of 12:00 AM on July 30, 2013, the SAs and ROs must cease all review of any initial HHA applications pending within the SA or RO for prospective providers in the affected zip codes of the moratorium. In addition, the SAs/ROs may not review any application for an HHA branch location within the affected zip codes throughout the duration of the moratorium.

Background

On July 31, 2013, CMS published a *Federal Register* Notice announcing a temporary enrollment moratorium under the Affordable Care Act (ACA) authority to fight fraud in Medicare, Medicaid and the Children's Health Insurance Program (CHIP).

The moratorium impacts all initial HHA applications that were not approved by 12:00 AM on July 30, 2013. Approved means that by 12:00 AM July 30, 2013 the initial certification survey was completed; the second MAC review was completed; the RO sent the tie-in notice to the MAC; the MAC performed a site visit and the MAC decided to switch the HHA's Provider Enrollment Chain Organization System (PECOS) record to an "approved" status.

Section 6401 of the ACA added new sections 1866(j)(7), 1902 (kk)(4) and 2107 (e)(1)(D) to the Social Security Act providing the Secretary with the authority to impose such a moratorium. The moratorium that was announced on July 31 2013, temporarily halts the enrollment of new HHA providers and HHA branches in the metropolitan areas of Miami, FL and Chicago, IL. Before taking this action CMS consulted with law enforcement officials and determined that there was a high risk of fraud, a disproportionately high enrollment of new providers and a high utilization of services in these geographic areas. CMS has also determined that the moratorium will not affect access to care for beneficiaries in these areas. However, CMS will continue to monitor access to care throughout the moratorium to ensure that beneficiaries are receiving the services they need.

Action

Effective July 30, 2013, CMS will deny all new or currently unapproved provider applications (Form CMS-855A) from HHA applicants in Miami-Dade and Monroe Counties in Florida and Cook, DuPage, Kane, Lake, McHenry and Will Counties in Illinois. As of the implementation date, State Survey Agencies (SA) and ROs associated with the affected counties will not receive any new "approval recommended" notices from the MAC for initial HHA certification surveys or branch location additions in these counties until the moratorium is lifted. Since it is the "approval recommended" notice which initiates the survey process, no initial HHA surveys may be scheduled in the affected counties until further notice.

Currently unapproved HHA applications are those for which the MAC did not decide to switch the HHA's PECOS record to an "approved" status before 12:00 AM July 30, 2013. This means that any pending initial HHA applications that did not have **all** of the following completed by 12:00 AM July 30, 2013 are included in the moratorium:

- (1) Initial certification survey was completed and compliance with Conditions of Participation determined;
- (2) Second review was completed by the MAC;
- (3) The CMS RO transmitted a tie-in notice (Form CMS-2007) to the MAC; (i.e., is no longer pending at the SA or RO)
- (4) The MAC performed a site visit; and
- (5) The MAC decided to switch the HHA's PECOS record to an approved status.

If an application had all these steps completed prior to 12:00 AM July 30, 2013, the application is considered "approved" and will not be affected by the moratorium. All initial HHA applications for prospective providers in the affected zip codes that were still "pending at the SA or RO" as of 12:00 AM on July 30, 2013 are included in the moratorium and will be denied by the MAC. "Pending at the SA or RO" means those applications for which the RO had **not** transmitted a tie-in notice (Form CMS-2007) to the MAC for a prospective HHA provider in the affected zip codes by 12:00 AM July 30, 2013. All subsequent SA and RO survey and

certification actions on pending HHA applications must cease immediately. The MAC will notify the applicant of the denial. Once the moratorium is lifted, any prospective provider affected by the moratorium and thus denied by the MAC must complete the entire enrollment application and certification process again if it wishes to participate in the Medicare program.

Also, please be advised that the MAC will deny any application for the addition of an HHA branch location in the zip codes subject to the moratorium. Accordingly, until further notice, ROs and SAs may not conduct any review of a request for the addition of an HHA branch location in the zip codes of the affected counties (including reviews that were in progress as of 12:00 AM July 30, 2013).

The moratorium will last for six months, but CMS may lift the moratorium early or extend it for additional six-month increments. CMS will publish another notice if the moratorium is to be lifted or extended.

Areas Not Affected by the Moratorium

“Approval recommended” notifications from the MAC will continue to be received by the ROs/SAs for prospective HHA providers outside the affected zip codes in FL and IL. However, the RO/SA should double-check each application to confirm that the applicant is not located in one of the affected zip codes. Any questions or concerns should be directed to the applicable MAC. Initial HHA applications in all other areas of the country, not included within the moratorium, will continue to be processed as usual.

Appeals

Appeal information will be included in the MAC denial letter and prospective applicants should be referred to the MAC for any questions regarding the appeal process.

Accreditation

During the moratorium, a prospective HHA’s accreditation by a CMS approved Accrediting Organization (AO) program will not serve as the basis for Medicare participation through deemed status. In such cases a new provider agreement will not be approved, nor will a new branch location for an existing deemed HHA be approved for the affected zip codes. In response to inquiries from HHA applicants in the affected zip codes that were seeking certification through an AO, the RO/SA should advise that it is the decision of the applicant as to whether they wish to continue to seek accreditation status with the AO despite being denied Medicare enrollment under the moratorium.

Contacts

All press inquiries regarding the moratoria should be directed to the CMS Office of Communications to the attention of Patti Unruh. She may be contacted at (202) 260-1135 or via electronic mail at Patti.Unruh@cms.hhs.gov.

For your information, we have attached the sample denial letter provided by CMS to the MACs and a listing of the zip codes for the affected areas.

For additional information or questions related to survey and certification, contact your appropriate CMS RO. The Central Office contact for policy issues is Patricia Sevast at patricia.sevast@cms.hhs.gov or at 410-786-8135.

Effective Date: Immediately. This information 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/

Thomas E. Hamilton

Attachments:

MAC Temporary Moratorium Denial Letter

HHA-Moratorium Zip Codes

Qs and As

cc: Survey and Certification Regional Office Management