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Insurance Lobby Decries 'One-Two Punch' Of CMS Moratorium

By **Mark Payne**

Law360 (October 27, 2026, 3:39 PM EDT) -- Johnny Wallin has been working in the insurance industry since he graduated from high school in 2010.

After a start in the Medicare space, he shifted to the new state-federal insurance exchanges after President Barack Obama's Administration enacted the Affordable Care Act in 2010.

Wallin is now the chief operating officer of Marketplace Insurance Exchange, an agency based in Arlington, Texas, that helps clients enroll in health plans through the Affordable Care Act marketplaces.

But a new federal moratorium issued via an interim final rule from the Centers for Medicare & Medicaid Services blocks new agents and brokers from entering the exchanges.

Agents and brokers helped more than 75% of the 10.8 million enrollees purchase insurance plans through the exchanges in 2026, according to CMS, marking a 22% increase since 2021.

The new rule threatens to block about 19,000 new agents from helping with open enrollment, which starts on Nov. 1. That's a major challenge for businesses like Wallin's, which recently beefed up staff to help largely non-English-speaking customers get health insurance.

"I've paid all these people that basically can't work now," Wallin told Law360.

The insurance lobby is fighting back with a pair of lawsuits, arguing the recent moratorium will make it more challenging for agents and brokers to enroll Americans into health insurance plans through the Affordable Care Act exchanges.

The lawsuits, filed in recent weeks by the insurance trade groups National Association of Benefits and Insurance Professionals and Health Agents for America, challenge the interim final rule published in September that bars new agents and brokers for the 2027 plan year.

The rule was announced the same day the federal government canceled coverage for 760,000 ACA exchange enrollees, fueled by the administration's claims of unverified citizenship and fraud, even though they enrolled in the exchanges with the help of agents or brokers.

Though the federal government later added back some of those enrollees, the damage could be long-lasting for agents, brokers, and consumers seeking health insurance, according to Jim Napoli, a

managing partner at the Washington, D.C.-based firm Dicerros Law PLLC, which represents HAFA.

"This is like a one-two punch by CMS," Napoli said.

Escalating Enforcement

CMS announced on Sept. 22 that it was canceling improper enrollments for 760,000 individuals, and recouping \$2.2 billion for the federal government.

That same day, the agency said it planned to hold agents and brokers responsible for the unauthorized enrollments. CMS claims agents and brokers submitted ACA applications without key information, including Social Security numbers.

In the 2026 plan year, agents and brokers accounted for a "disproportionate share of unauthorized enrollments," the agency said in a news release.

To address this, the agency is blocking new agents and brokers from enrolling for the 2027 plan year. Only agents and brokers approved for the 2026 plan year could register for the new plan year.

The agency also said it had already sent notices terminating 569 agents and brokers who submitted applications with incorrect information for the 2026 plan year. The moratorium will prevent the registration of about 19,000 brokers and agents, CMS said.

"CMS is strengthening safeguards, pursuing bad actors, and holding agents and brokers accountable when they break the rules," said Robert F. Kennedy Jr., secretary of the U.S. Department of Health and Human Services, in a September news release.

Over the past year, the agency has taken action through the Marketplace Integrity Rule and the Notice of Benefit and Payment Parameters, which set standards for agents and brokers to ensure compliance and hold so-called "bad actors" accountable.

Some changes include using a new, standard HHS-approved form to collect information and ensure the right documents are submitted. Another change aims to prevent unauthorized switching between insurance plans.

The moratorium is the agency's most direct action to combat alleged fraud by agents and brokers, according to Katie Keith, founding director of the Center for Health Policy and the Law at Georgetown University's O'Neill Institute.

"I don't know that that's the way to discourage the behavior," Keith said, adding that the root of the problem "seems to be bad actors."

While there's no dispute that there is some fraud at play, most enforcement actions have focused on licensing issues, said David E. Kopans, a partner at DLA Piper. Fraud and non-compliance have made up a much smaller share of enforcement, he said.

"There's no dispute about some of the bad actors in the space, but it doesn't seem like there's much of a dispute that most brokers are engaging in legitimate activities and helping people find health insurance coverage," Kopans said.

George B. Breen, a member of the firm Epstein Becker Green, told Law360 that the moratorium will block eligible brokers, agents, and consumers from participating in the federal insurance program without any indication they've done anything wrong.

He also said the government has other tools to address the limited number of people committing fraud in the ACA market.

"It's taking a hammer to a situation where a scalpel is probably the better tool to utilize," Breen said.

Insurance Lobby Pushes Back

The agent associations aren't the only ones raising concerns about the moratorium. In an Oct. 14 letter, the National Association of Insurance Commissioners told CMS it has "significant concerns" about the moratorium.

The trade group asked CMS to consider changes that would allow the agency to block those with fraudulent intentions while allowing new agents and brokers who can help with new insurance carriers, existing carriers, and agent turnover.

Time is of the essence, the group said, with open enrollment in the exchanges starting on Nov. 1.

"We ask that CMS establish a method for state regulators, health insurance carriers, and insurance agencies and brokerages to appeal to CMS for an exception to the moratorium," NAIC said.

The next day, Oct. 15, National Association of Benefits and Insurance Professionals filed its lawsuit in the District of Maryland, claiming that CMS didn't comply with the Administrative Procedure Act because it didn't allow a notice-and-comment period when adopting the new rule, among other claims.

"NABIP supports the administration's efforts to root out fraud in the health-care system," the complaint said. "But penalizing thousands of agents and brokers for the actions of a relatively small handful of people is not the way to achieve that laudable goal."

However, CMS claimed it was able to skip the comment period.

"HHS finds good cause under the Administrative Procedure Act to waive prior notice and comment because providing advance notice would be contrary to the public interest and impracticable," the agency wrote in its rule on the Federal Register.

HHS also argued the moratorium is a temporary measure to pause registrations while it strengthens anti-fraud safeguards.

"Faced with these risks to consumers and the federal fisc, CMS determined that its existing enforcement tools were not sufficient because they generally operate only after an agent or broker has registered and begun conducting transactions — and thus after harm may already have occurred," CMS wrote in its response.

HAFA filed its suit on Oct. 22, arguing that the agency unlawfully blocked it from registering agents to help Americans find marketplace insurance for 2027.

Ronnell Nolan, HAFA's president and CEO, told Law360 she was on Capitol Hill this week meeting with legislators to build support for their cause. She said she has spoken with CMS leadership about the new rules and the moratorium.

"I told them that it is heartbreaking for all the things that they're putting in place that harm my industry," she said.

Wallin, also a board member at HAFA, flew to the nation's capital on Monday to help gather support from lawmakers and told Law360 that another complication is that his current agents will be backlogged with enrollments because plans don't auto-renew.

"We touch our customers every year, so we're going to be so busy stuck on the phone, trying to get through the new processes," he said.

What's Next?

At a motion hearing on Oct. 21, U.S. District Judge Stephanie A. Gallagher asked how long it would take HHS to reopen training for new agents and brokers.

In a declaration submitted to the court a day later, Elizabeth Parish, CMS deputy director for Operations at the Center for Consumer Information and Insurance Oversight, said new agents and brokers receive training in a few hours.

"CMS has the ability to reopen training for new agents and brokers within 24 hours," Parish wrote.

While the judge didn't necessarily tip her hand by asking how long it would take to reopen training, the question is insightful, said Steven Hamilton, a partner at Crowell & Moring LLP. He said if the court grants the TRO, it signals the court agrees with the merits of the case.

"If it grants the TRO and requires the agency to open up registration and provide training, then there will be kind of a win right away on the merits, and something that's harder to undo after the fact," he said.

Both parties will return to Judge Gallagher on Nov. 5 to argue over the temporary restraining orders and temporary injunction requests.

CMS declined to comment on ongoing litigation. NABIP didn't respond to requests for comment.

--Additional reporting by Gianna Ferrarin. Editing by Amy Rowe.