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CMS Hit With Another Broker Suit Over ACA Registration Bar

By **Gianna Ferrarin**

Law360 (October 22, 2026, 5:02 PM EDT) -- The Centers for Medicare & Medicaid Services has been hit with another suit by health insurance brokers alleging the agency is unlawfully blocking them from registering to help individuals find Affordable Care Act marketplace coverage for plan year 2027.

While CMS has a legitimate interest in preventing fraud, its temporary moratorium barring brokers and agents who didn't have marketplace agreements in 2026 from registering for the upcoming plan year is improper, Health Agents for America told a Maryland federal court Wednesday. Composed of over 1,000 licensed health insurance brokers, HAFA alleged the policy will harm its membership and the public.

Many brokers subject to policy have "boots on the ground" and help consumers who otherwise wouldn't have the ability to enroll in ACA marketplace coverage, James R. Napoli, an attorney representing HAFA, told Law360 on Thursday.

"These are individuals who may not have access to the internet, may not even have a phone for that matter, so the agents go to the consumer," Napoli said. "You start taking the agents away, you're going to have consumers that just don't have the ability to enroll absent an agent."

The suit comes nearly a week after **another broker group** — the National Association of Benefits and Insurance Professionals — challenged CMS' moratorium in Maryland federal court.

Both suits bring Administrative Procedure Act claims and allege that the U.S. Department of Health and Human Services unlawfully authorized the Sept. 22 moratorium in a rule posted on the same day without advance notice. CMS' moratorium is effective throughout the entire open enrollment period for plan year 2027, which begins Nov. 1.

Specifically, the HHS rule authorizes CMS to pause registrations whenever HHS determines that agent and broker conduct poses an "unacceptable risk" to the operations of a federally facilitated exchange.

HHS stated in the rule that it had good cause to waive APA notice requirements, finding advance notice would be "contrary to the public interest" in part because it would create an incentive for affected individuals to "accelerate their registrations before the restriction takes effect."

But HHS' justifications for issuing the rule without advance notice were inadequate, HAFA argued in its **Wednesday suit**.

In particular, HHS didn't explain why an expedited notice-and-comment process or application of its existing enforcement mechanisms weren't sufficient to address the risks it identified, HAFA alleged.

HHS also didn't demonstrate that the rule's breadth was necessary to address fraud risks, HAFA argued, saying the rule "prevents otherwise eligible agents and brokers from completing registration without an individualized determination that they have engaged in misconduct."

While CMS has said its moratorium is aimed at addressing "high-risk activity" from newly registered brokers, HAFA President Ronnell Nolan told Law360 the policy will affect both seasoned and new agents alike.

"It's not fair to take a whole group of people that are new and decide that they're fraudulent just because they're brand new to the industry," Nolan said. "But some are not brand new. I had an email from a member that said, 'You know, I've been in the ACA for 20 years, but I was sick, so last year I sat out.' That person cannot sell because they're considered new to [the 2027 plan year]."

HAFA also cited a 2025 report from the Government Accountability Office on vulnerabilities in HHS' online open enrollment platform, arguing the platform is "riddled with security risks that could have been readily fixed over the past eight (8) years."

"HHS must own its own culpability in the fraud and abuse occurring in the marketplace and not be permitted to lay off its culpability on an arbitrarily selected group of agents and brokers," the complaint said.

Without intervention from the court, HAFA's membership will be forced to lay off new hires, see the value of their investments for plan year 2027 eliminated and face disruptions in their ability to assist clients, HAFA alleged.

HAFA urged the court to declare the HHS rule authorizing the moratorium unlawful and issue injunctive relief preventing enforcement of the challenged provisions.

HHS didn't immediately respond to a Thursday request for comment.

HAFA is represented by James R. Napoli of Diceros Law PLLC.

Counsel information for the federal government wasn't immediately available Thursday.

The case is Health Agents for America v. Robert F. Kennedy Jr. et al., case number 1:26-cv-04415, in the U.S. District Court for the District of Maryland.

--Editing by Abbie Sarfo.

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