**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

AAA Healthcare Services, Inc.
(CCN: 747039;
NPI: 1144427485)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-656

Decision No. CR4739

Date: November 18, 2016

# DECISION

Palmetto GBA, an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Petitioner, AAA Healthcare Services, Inc., because Petitioner failed to timely provide a Zone Program Integrity Contractor (ZPIC), Health Integrity, access to requested documentation involving 30 of its patients. CMS upheld the revocation in a reconsidered determination, and Petitioner requested a hearing to dispute the revocation. For the reasons stated herein, I affirm CMS's determination revoking Petitioner's Medicare enrollment and billing privileges.

## I. Background

Petitioner is a home health agency that was enrolled as a provider of services in the Medicare program. On December 1, 2015, the ZPIC informed Petitioner that it would be "conducting a review of selected claims [Petitioner had] submitted to Medicare and/or Medicaid," and that "[t]he records we are requesting include any and all documentation to support the medical necessity of services billed for the specific dates of service on the attached list plus the preceding 60 days." CMS Exhibit (CMS Ex.) 1 at 1-2. Petitioner requested an additional 30 days to submit the requested records (CMS Ex. 3), and when the records were not received by February 3, 2016, the ZPIC notified Petitioner that it must submit the requested records within five days. CMS Ex. 4 at 1. After Petitioner failed to respond to the ZPIC's follow-up letter directing that it submit the documentation

within five days, Palmetto GBA notified Petitioner, on March 14, 2016, that it had revoked Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(10)[1] based on Petitioner's failure to provide access to requested documentation upon the request of CMS or a Medicare contractor. CMS Ex. 5 at 1. Additionally, Palmetto GBA informed Petitioner it had established a one-year re-enrollment bar. CMS Ex. 5 at 1-2.

On April 4, 2016, Petitioner submitted a timely request for reconsideration, arguing that the revocation of its Medicare enrollment and billing privileges was improper because it had sent the requested documentation on March 10, 2016. Petitioner's (P.) Ex. 4 at 2. CMS's Provider Enrollment Oversight Group issued a reconsidered determination on April 26, 2016, in which it determined that Palmetto GBA properly revoked Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. §§ 424.535(a)(10) and 424.516(f) because Petitioner "repeatedly failed to provide the documentation upon request." CMS Ex. 6 at 3. CMS explained that pursuant to 42 C.F.R. §§ 424.516(f) and 424.535(a)(10), providers are responsible for "maintaining and providing access to the documentation upon the request of CMS or a Medicare contractor." CMS Ex. 6 at 3.

Petitioner submitted a timely request for hearing that was dated June 6, 2016, and received June 21, 2016. Petitioner supplemented its hearing request on June 30, 2016.

In an Order dated July 19, 2016, I directed the parties to submit pre-hearing briefs addressing all issues of law and fact, along with any proposed exhibits. Order, § 3. Pursuant to my Order, CMS submitted its pre-hearing brief (CMS Br.), along with six proposed exhibits (CMS Exs. 1 to 6). Petitioner submitted its pre-hearing brief (P. Br.) with five proposed exhibits.[2] In the absence of any objections, I will admit the parties' exhibits into the record, with the exception of P. Ex. 5, which is a copy of an Order that I issued on June 6, 2016; this Order is not offered as evidence in support of Petitioner's arguments, and I will not admit it into the record. I therefore admit CMS Exs. 1-6 and P. Exs. 1-4.

Neither party offered the testimony of any witnesses, and therefore, a hearing to cross-examine witnesses is not necessary. See Acknowledgment and Prehearing Order §§ 8, 9,

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[1] CMS, in its brief, cites to 42 C.F.R. § 424.535(a)(1) as a basis for revocation, but it otherwise appears that CMS intended to rely upon the same regulatory basis, 42 C.F.R. § 424.535(a)(10) that it and its contractor previously relied upon. CMS Br. at 3.

[2] Petitioner's submission of proposed exhibits is not compliant with my Order, to include that Petitioner did not upload its exhibits as separate documents and did not mark its exhibits with whole numbers. I have re-designated Petitioner's Exhibits A through D as Petitioner's Exhibits 1 through 4, respectively.

and 10. I consider the record in this case to be closed, and the matter is ready for a decision on the merits.

## II. Issue

The issue is whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. §§ 424.535(a)(l0) and 424.516(f) because Petitioner did not timely provide the ZPIC access to requested documentation.

## III. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(*l*)(2).

## IV. Findings of Fact, Conclusions of Law, and Analysis[3]

The Social Security Act authorizes the Secretary of Health and Human Services (Secretary) to establish regulations governing the enrolling of providers and suppliers in the Medicare program. 42 U.S.C. § 1395cc(j)(1)(A). The Secretary promulgated enrollment regulations in 42 C.F.R. part 424, subpart P. *See* 42 C.F.R. §§ 424.500-.570. The regulations provide CMS with the authority to revoke the billing privileges of an enrolled provider or supplier if CMS determines that a provider or supplier violated a provision in 42 C.F.R. § 424.535(a).

A provider or supplier may request reconsideration of an initial determination to revoke its privileges. 42 C.F.R. §§ 498.5(*l*)(1), 498.22(a). If dissatisfied with the reconsidered determination, the provider or supplier may request a hearing before an administrative law judge. *Id.* § 498.5(*l*)(2).

As a home health agency, Petitioner was a provider for purposes of the Medicare program. 42 U.S.C. § 1395(x)(u).

### ***1. The ZPIC sent Petitioner a request for documentation to support the medical necessity of services billed for specified dates of service, and Petitioner did not submit a response within the time period designated by the ZPIC.***

The ZPIC informed Petitioner that it would be "conducting a review of selected claims" Petitioner had submitted, and requested that Petitioner submit requested documentation supporting the medical necessity of services no later than 30 days from the date of the December 1, 2015 letter. CMS Ex. 1 at 1. The documentation request included records such as patients' medical records for specific dates of service, nurses' notes, therapy progress notes and orders, and plans of care for specified periods. CMS Ex. 1 at 1.

[3] My findings of fact and conclusions of law are set forth in italics and bold font.

Petitioner sent a letter to the ZPIC on December 22, 2015, in which it requested an extension until January 31, 2016, to provide the required documentation due to the intervening holidays and an inability to make copies of the records as a result of a malfunctioning office copier. CMS Ex. 3 at 1.

Petitioner failed to meet the January 31, 2016 deadline. CMS Ex. 4 at 1; P. Br. at 2. On February 3, 2016, the ZPIC issued a "SECOND REQUEST" via FedEx for Petitioner "to submit to Health Integrity any medical records to support the medical necessity and reasonableness of the services billed to Medicare," and directed that Petitioner submit the requested documentation within five days. CMS Ex. 4 at 1.

Petitioner did not submit the requested documentation within five days. Petitioner admitted that it "submitted the requested records on 3/10/16 and they were received on 3/11/16 at 9:43a[m] signed by L[.] Hawkins." P. Ex. 4 at 1. Petitioner submitted additional documentation on April 4, 2016. P. Ex. 4 at 1.

Allowing five days for mail service, even though service was presumably effectuated by FedEx in fewer than five days, Petitioner was required to submit the requested documentation to the ZPIC no later than February 16, 2016.[4] Petitioner did not submit a timely response to the ZPIC's February 3, 2016 letter that directed it to submit the requested records within five days, and Petitioner did not comply with the ZPIC's second request until more than a month later. Therefore, Petitioner did not timely respond to the ZPIC's request for documentation.

***2. CMS had a basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. §§ 424.535(a)(10) and 424.516(f) because Petitioner failed to provide the documentation requested within the given timeframe.***

Pursuant to 42 C.F.R. § 424.535(a)(10), CMS may revoke a provider's or supplier's billing privileges and any corresponding provider or supplier agreement if:

> (i) The provider or supplier did not comply with the documentation or CMS access requirements specified in § 424.516(f) of this subpart.
>
> (ii) A provider or supplier that meets the revocation criteria specified in paragraph (a)(10)(i) of this section, is subject to revocation for a period of not more than 1 year for each act of noncompliance.

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[4] February 16, 2016 is first business day following February 13, 2016.

Section 424.516(f) provides additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program. Specifically, the regulation provides:

> (f) *Maintaining and providing access to documentation.* (1)(i) A provider or a supplier that furnishes covered ordered items of DMEPOS, clinical laboratory, imaging services, or covered ordered/certified home health services is required to—
>
> > (A) Maintain documentation (as described in paragraph (f)(1)(ii) of this section) for 7 years from the date of service; and
> >
> > (B) Upon the request of CMS or a Medicare contractor, to provide access to that documentation (as described in paragraph (f)(1)(ii) of this section).

Petitioner concedes that it did not furnish the requested documentation in a timely manner; specifically, Petitioner has submitted uncontroverted evidence that it did not submit the requested documentation until March 2016, which was well after the deadline. P. Ex. 4 at 1 (Petitioner's April 4, 2016 letter stating that it mailed records to the ZPIC on March 10, 2016); *see* CMS Ex. 6 at 2 (reconsidered determination stating that Petitioner submitted a "medical records submission letter" on March 7, 2016); P. Br. at 2 (Petitioner's statement that it submitted a letter on March 7, 2016, and "included the records requested with a summary on each of the requested records").

I conclude that CMS had a basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. §§ 424.535(a)(l0) and 424.516(f) because Petitioner failed to provide the requested documentation in a timely manner. Pursuant to 42 C.F.R. § 424.516(f), a party is required to provide documents "upon request." Here, Petitioner failed to provide the documents upon the ZPIC's request, even though it was given ample opportunity to submit the documents. The ZPIC first requested that Petitioner submit the documents within 30 days of its December 1, 2015 letter, and then extended the deadline an additional 30 days following Petitioner's request for additional time based on the holidays and problems with its photocopier. After Petitioner did not comply with the extended deadline, the ZPIC gave Petitioner yet another opportunity to submit the documentation. Petitioner failed to submit any documentation and did not request another extension of the deadline; rather, Petitioner simply ignored the ZPIC's time-sensitive second request for documentation. While Petitioner *eventually* provided the requested documents more than a month after the ZPIC sent its second request letter, Petitioner did so well beyond the time allowed by the ZPIC. Palmetto was authorized to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. §§ 424.516(f) and 424.535(a)(10) due to Petitioner's failure to provide access to documentation requested by the ZPIC. Here, there is no dispute that Petitioner did not provide the requested documents within the given timeframe. P. Br. at 2; *see* P. Ex. 4;

CMS Ex. 6 at 2. Therefore, CMS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(10); *see Letantia Bussell, M.D.*, DAB No. 2196 at 13 (2008) (review of CMS determination by ALJ addresses "whether CMS had the authority to revoke . . .").

Petitioner explained in its request for hearing that it was unable to comply with the ZPIC's request in a timely manner "due to financial issues that prevented us access to the records at the office (payment for rent was late, thus the landlord denied us access to the requested records)." Request for Hearing, at 1. However, Petitioner acknowledged in its brief that it paid its rent in full on February 11, 2016, and regained access to its office on that same date. P. Br. at 1-2. Therefore, as Petitioner regained access to the records on February 11, 2016, it is unclear why it took Petitioner approximately one more month to comply with the records request and Petitioner did not submit the requested documentation until either March 7 or 10, 2016. Further, as Petitioner had previously requested an extension of the deadline to comply with the request, it is unclear why Petitioner did not inform the ZPIC that it did not have access to the records and request an additional short extension of the deadline. Instead, Petitioner essentially ignored the second request and the accompanying deadline, and did not submit the requested records for nearly a month following the date it regained access to the documentation in question. Petitioner has not presented any meritorious basis to challenge CMS's revocation of its enrollment and billing privileges, and it has not presented evidence of a circumstance beyond its control that prevented it from complying with the ZPIC's request. Petitioner's failure to pay its rent, and the resulting temporary loss of access to its office, does not amount to a circumstance *beyond its control*.

## V. Conclusion

For the reasons explained above, I affirm the revocation of Petitioner's Medicare enrollment and billing privileges.

________/s/_______________
Leslie C. Rogall
Administrative Law Judge