Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Adora Healthcare Services, Inc.,
(NPI: 1942385281),

Petitioner,

v.

Centers for Medicare & Medicaid Services,

Respondent.

Docket No. C-15-682

Decision No. CR4229

Date: September 18, 2015

DECISION

I reverse the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the Medicare enrollment and billing privileges of Petitioner, Adora Healthcare Services, Inc. Based on an attempted on-site visit, CMS determined that Petitioner was no longer operational. Petitioner has demonstrated, however, it moved from that location and timely reported its change of address to the Medicare contractor.

I. Background

Petitioner is a home health agency that was enrolled as a provider in the Medicare program. On July 7, 2014, the CMS administrative contractor, Palmetto GBA (Palmetto), attempted to conduct a site visit of Petitioner's facility at 14405 Walters Road, Suite 340, Houston, Texas. On September 25, 3014, Palmetto notified Petitioner, based on the attempted on-site review, it determined Petitioner was "no longer operational to furnish Medicare covered items or services and is not meeting Medicare

enrollment requirements under statute or regulation to supervise treatment of or to provide Medicare covered items or services for Medicare patients." CMS Exhibit (Ex.) 1; *see* 42 C.F.R. § 424.535(a)(5); 42 U.S.C. §§ 1302, 1395cc(j), 1395hh. Accordingly, the contractor revoked Petitioner's enrollment effective July 7, 2014, the date of the attempted site visit. CMS Ex. 1.

Petitioner requested a reconsidered determination asserting that it moved its practice location and timely notified the contractor of this change on June 26, 2014. CMS Ex. 2. On December 4, 2014, CMS affirmed the revocation stating that it contacted Palmetto to verify Petitioner's assertion, but Palmetto had no record of Petitioner's change of address notification. CMS Ex. 5.

Petitioner submitted a request for hearing (RFH) to seek review of the reconsidered determination and included four exhibits marked A through D (RFH Exs. A – D). The matter was assigned to me for hearing and decision, and I issued an Acknowledgment and Prehearing Order (Prehearing Order) that established a briefing schedule requiring the parties to submit all of their arguments and proposed exhibits in a prehearing exchange that included any witness direct testimony in writing as a sworn exhibit and any motions for summary judgment. CMS timely filed its prehearing exchange including a motion for summary judgment (CMS Br.) and CMS Exs. 1 – 8. Petitioner timely filed its prehearing exchange including a brief in opposition to the CMS motion for summary judgment (P. Br.) and Petitioner's Exhibits (P. Exs.) 1 and 2.

Petitioner objected to CMS Exs. 6 – 8. Petitioner asserts that CMS Ex. 6, the investigator's site visit report, is not signed or dated by the investigator. However, CMS also submitted the investigator's written declaration as CMS Ex. 8, which authenticates CMS Ex. 6. Petitioner also objects to two witness affidavits of direct testimony, CMS Exs. 7 and 8, because they are undated. I overrule Petitioner's objection because the fact that they are undated would only potentially affect the weight I may give them and not their ultimate admissibility. CMS has not opposed any of Petitioner's proposed exhibits. Therefore, I admit CMS Exs. 1 – 8, RFH Exs. A – D, and P. Exs. 1 – 2.

Petitioner also submitted affidavits of direct testimony from two proposed witnesses as P. Exs. 1 and 2. Neither party requested to cross-examine any of the proposed witnesses. I informed the parties that I would only conduct a hearing if either party submitted affidavits of direct testimony from a witness, and the opposing party asked to cross-examine that witness. Prehearing Order ¶10. Because the parties did not seek to cross-examine any witness, an in-person hearing is not necessary, and I will decide this matter on the written record. Prehearing Order ¶11; *see Marcus Singel, D.P.M.*, DAB No. 2609, at 5-6 (2014).

II. Issue

Whether CMS had a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because it was not operational; and

Whether Petitioner properly reported a change of address to CMS within 90 days.

III. Findings of Fact and Conclusions of Law

1. CMS conducted an attempted on-site review of Petitioner on July 7, 2014.

The parties agree that on July 7, 2014, a CMS contractor attempted to conduct an inspection of Petitioner at 14405 Walters Road, Suite 340, Houston, Texas. CMS Ex. 6 at 1; CMS Ex. 7 at 2; CMS Ex. 8. The contractor visited the Walters Road location based on location notifications it received from Petitioner on June 20, 2011, and December 26, 2013. CMS Ex. 7 at 2. The inspector reported that, although Petitioner's name was listed on the building directory, the inspector was unable to locate the specific office suite of record. CMS Ex. 6 at 1; CMS Ex. 8 at 2. The inspector's report states the inspector called Petitioner's "listed number" and there was no answer, but she does not document the phone number anywhere in her report. CMS Ex. 6 at 1. Nonetheless, the inspector testified the phone number was listed on two websites for Petitioner, and she confirmed this fact through her phone records. CMS Ex. 8 at 2. Based on the investigator's attempted site-visit, CMS concluded that Petitioner was "no longer operational to furnish Medicare covered items or services, or failed to satisfy any Medicare enrollment requirement." *See* 42 C.F.R. § 425.535(a)(5).

2. CMS revoked Petitioner as non-operational based on its attempted on- site review.

A provider or supplier must be enrolled in the Medicare program and have a billing number in order to be eligible to receive payment for services rendered to a Medicare-eligible beneficiary. 42 C.F.R. § 424.505. "Providers" include home health agencies. *See* 42 U.S.C. §§ 1395x(u); 42 C.F.R. § 400.202. CMS may perform an "on-site review" of a provider to "verify that the enrollment information submitted to CMS or its agents is accurate and to determine compliance with Medicare enrollment requirements." 42 C.F.R. § 424.517(a). CMS may use the results of an on-site review to support a decision to deny or revoke a provider or supplier's enrollment. 42 C.F.R. § 424.517(a).

Upon on-site review, CMS determined that Petitioner was no longer operational to continue to furnish Medicare-covered items or services. Therefore CMS revoked the Petitioner's enrollment and billing privileges effective July 7, 2014, the date of the attempted site visit. CMS Ex. 1; *see* 42 C.F.R. § 424.535(a)(5).

3. *Petitioner has come forward with persuasive evidence demonstrating that it moved its location on July 1, 2014 and timely mailed the Medicare contractor notification five days prior on June 26, 2014.*

Home health agencies, such as Petitioner, are required to report a change of address to the Medicare contractor within 90 days. *See* 42 C.F.R. § 424.516(e)(2). On July 1, 2014, Petitioner asserts its business moved from the Walters Road location to 14511 Falling Creek Drive, Suite 100-12, Houston, Texas on July 1, 2015. CMS Ex. 3; RFH Exs. C – D. Petitioner maintains, five days prior to the move, on June 26, 2014, it notified Palmetto of its pending address change. On that date, Petitioner reports its management completed a notification on the Medicare Enrollment Application, CMS Form 855-A, and mailed it to Palmetto, its CMS contractor.

In support of the notification, Petitioner relies on various submissions, including the written direct testimony of two employees. P. Exs. 1 – 2. Specifically, Petitioner submits the written declarations of Petitioner's manager and authorized official (P. Ex. 1; CMS Ex. 3 at 12) and Petitioner's assistant office manager (P. Ex. 2). Petitioner's manager affirms that on June 26, 2014, he completed the CMS Form 855-A to notify CMS that Petitioner was relocating to the Falling Creek location. P. Ex. 1. Petitioner's assistant office manager testified that, after Petitioner's manager completed the notification, she "reviewed [it] for accuracy and completion" on the same date. P. Ex. 2. Petitioner's manager attested that, also on June 26, 2014, he "personally dropped off the envelope with form 855-A in the mail for delivery to Palmetto GBA." P. Ex. 1. The assistant office manager supports the manager's statements declaring that the form "was dropped in the mail by [Petitioner's manager] . . . on June 26, 2014." P. Ex. 2. CMS chose not to challenge Petitioner's witness testimony through cross-examination.

Petitioner also submits its copies of the June 26, 2014, CMS Form 855-A, which further bolsters Petitioner's notification assertions. The enrollment form contains the manager's signature, dated June 26, and it reports that Petitioner's move will be effective July 1, 2014. RFH Ex. C; CMS Ex. 3. Petitioner argues it submitted the change in address notification, for purposes of its Medicaid coverage, to the Texas Department of Aging and Disability Services (TDADS) at the same time it submitted the change in address notification to Palmetto. In support, Petitioner filed a notice from TDADS assigning Petitioner a July 14, 2014, effective date for its change in address. CMS Ex. 4; RFH Ex. C at 1-2. CMS argues, however, that the state notice does not support that Palmetto received the timely change of information application prior to the July 7 on-site visit. CMS Br. at 6-7. Nevertheless, a provider is not required to report a change in address before its move and is actually afforded 90 days to report a change in address. *See* 42 C.F.R. § 424.516(e)(2).

Finally, Petitioner offers the "Home Health Certification and Plan of Care" for multiple patients for care services it provided during July 2014. Each of these certifications

contains Petitioner's Falling Creek address. RFH Ex. D. This information helps persuade me that Petitioner was in fact operating at a new location.

CMS contends that it has no record of ever having received the change of address notification from Petitioner. CMS Br. at 5. In support, CMS offers the declaration of a Palmetto provider enrollment manager. CMS Ex. 7. Palmetto's enrollment manager attested generally that the provider enrollment area of Palmetto reviewed its records and determined that between December 27, 2013 and December 17, 2014, Palmetto did not receive the CMS Form 855-A from Petitioner regarding a change of address. CMS Ex. 7 at 2 (¶ 12).

Although I ascertain no reason to discredit CMS's assertion that Palmetto did not receive notification of Petitioner's move, I do find Petitioner's witnesses unchallenged recollections credible and consistent with Petitioner's copy of the form providing notice of the move and also consistent with TDADS's verification of Petitioner's move in July 2014. Further I do not find the inspector's assertion that she called Petitioner during her attempted site inspection compelling because she did not list the actual number she states she attempted to call in her inspection report. Overall, I am persuaded that Petitioner provided CMS with the requisite notification of its change of address by mailing the form to CMS in a timely manner. Because Palmetto concluded Petitioner was no longer operational based on its on-site review of a former address, there was no legal basis for CMS to revoke Petitioner's Medicare enrollment.

IV. Conclusion

I reverse the CMS determination to revoke Petitioner's enrollment and find that Petitioner properly notified the Medicare contractor of its change in location. I accordingly also reverse the two-year reenrollment bar that CMS imposed on Petitioner, which had been effective since July 7, 2015.

/s/

Joseph Grow
Administrative Law Judge