

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Esmeralda Ybarra a/k/a Esmeralda Vargas,  
(O.I. File No: H-15-4-3420-9),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-459

Decision No. CR4666

Date: July 28, 2016

**DECISION**

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Esmeralda Ybarra, a/k/a Esmeralda Vargas, from participating in Medicare, State Medicaid, and other federally funded health care programs for a period of at least five years. The exclusion is mandatory in this case because Petitioner was convicted of a criminal offense within the meaning of section 1128(a)(1) of the Social Security Act (Act).

**I. Background**

Petitioner requested a hearing to challenge the I.G.'s exclusion determination. The I.G. submitted a brief plus four proposed exhibits identified as I.G. Ex. 1 - I.G. Ex. 4 in support of his determination. Petitioner submitted a brief in opposition to the determination. Neither party offered the testimony of a witness nor requested an in-person hearing. I receive the I.G.'s proposed exhibits into the record, and issue this decision based on the written record.

## **II. Issue, Findings of Fact and Conclusions of Law**

### **A. Issue**

The issue is whether Petitioner was convicted of a criminal offense as is defined by section 1128(a)(1) of the Act.

### **B. Findings of Fact and Conclusions of Law**

The facts are not disputed. Petitioner was charged, under Texas law, with the crime of Medicaid fraud. I.G. Ex. 4. She entered a plea of nolo contendere to the charge and the sentencing court deferred adjudication for a period of two years. I.G. Ex. 2.

Petitioner's crime involved submitting false claims for Medicaid services that she did not provide. Subject to the rules of the Texas Medicaid program Petitioner submitted, and was reimbursed, for services that she claimed to have provided to her son, who is a Medicaid beneficiary. The services ostensibly consisted of services that Petitioner provided to her son while he was at home. However, Petitioner fraudulently claimed reimbursement for such services on occasions when her son was not at home and was hospitalized. I.G. Ex. 4 at 2.

Petitioner's crime plainly was a crime that falls within the meaning of section 1128(a)(1) of the Act. That section mandates exclusion of any individual who is convicted of a crime relating to the delivery of an item or service under Medicare or a State Medicaid program. Petitioner engaged in fraud aimed directly at the Texas Medicaid program. Such fraud falls within the plain meaning of section 1128(a)(1).

Petitioner does not deny her fraud. However, she contends that she was not convicted of a criminal offense within the meaning of Texas law because the court before which she appeared deferred final adjudication of her conviction. However, Petitioner plainly was convicted of a crime within the meaning of section 1128 of the Act. A "conviction" is defined to consist of a plea of nolo contendere and to include a deferred adjudication program where judgment of conviction has been withheld. Act § 1128(i)(3), (4). In this case the controlling law is federal law, not Texas law.

