

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Green Hills Enterprises, LLC d/b/a)	
Green Hills Hospital Program,)	Date: February 6, 2008
(CCN: 26-4623, Termed 4/13/94),)	
)	
Petitioner,)	Docket No. C-05-279
)	Decision No. CR1731
- v. -)	
)	
Centers for Medicare & Medicaid)	
Services.)	

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) that Petitioner, Green Hills Enterprises, LLC d/b/a Green Hills Hospital Program, Kirksville, Missouri, did not meet the requirements for certification to participate in the Medicare program as a community mental health center (CMHC) providing partial hospitalization services.

I. BACKGROUND

On September 24, 2004, Petitioner submitted an application to enroll in the Medicare program as a CMHC providing partial hospitalization services.¹ CMS exhibit (Ex.) 1, at 5-39. On January 31, 2005, the Missouri Department of Health and Senior Services informed Petitioner that it was ineligible to become a CMHC, based on a determination made by the Missouri Department of Mental Health (DMH), Division of Comprehensive Psychiatric Services. On February 25, 2005, the Medicare Part B carrier recommended

¹ Petitioner's owner initially applied to reinstate the provider number of another entity he owned. Petitioner's owner has since abandoned his attempt to reinstate that provider number and is appealing only the denial of Petitioner's enrollment.

denial of Petitioner's enrollment application based on the fact that Petitioner did not have a license or was not authorized by federal, state, or local government to perform the services for which it intended to submit claims for Medicare reimbursement. The denial was upheld by CMS. CMS Ex. 1, at 41-42, 61. Petitioner appealed the denial of its enrollment application by letter dated March 13, 2005.

The case was assigned to me for hearing and decision on November 9, 2005. After staying the case for a lengthy period to allow the parties to attempt settlement, I set a briefing schedule. The parties were to advise me if factual issues in the case would require an in-person hearing. I advised the parties that if, after reviewing their submissions, I found an in-person hearing was not required, I would determine whether any additional briefing was necessary. The parties have not requested an in-person hearing, and I find that a hearing is not required and that no further briefing is necessary for me to decide the case.

CMS submitted a brief (CMS Br.), accompanied by CMS Exs. 1 and 2, and a reply brief (CMS Reply), accompanied by CMS Ex. 3. Petitioner submitted a brief in response (P. Br.), accompanied by Petitioner's exhibits (P. Ex.) 1 through 19, and a sur-reply letter (P. Reply), accompanied by an attachment consisting of copies of Missouri statutes. I am marking this attachment as P. Ex. 20.

II. ISSUE

Whether CMS had a basis to deny Petitioner enrollment in the Medicare program as a CMHC providing partial hospitalization services.

III. APPLICABLE LAW

Section 1861ff(3)(A) of the Social Security Act (Act), as codified through January 1, 2005, defines partial hospitalization services as a program furnished either by a hospital to its outpatients, or by a CMHC, which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour care. A CMHC, as described at section 1861ff(3)(B), means an entity that,

(i)(I) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act; or

(II) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such services by contract with an approved organization or entity (as determined by the Secretary):

(ii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located; and

(iii) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act.

Section 1913(c)(1) of the Public Health Service Act (PHSA) requires a CMHC to provide services including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility; 24-hour emergency care services; day treatment or other partial hospitalization services or psychosocial rehabilitation services; and screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission.

Regulations at 42 C.F.R. § 410.2 define a CMHC as:

- (1) Provid[ing] outpatient services, including specialized outpatient services for children, the elderly, individuals who are chronically mentally ill, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility;
- (2) Provid[ing] 24-hour-a day emergency care services;
- (3) Provid[ing] day treatment or other partial hospitalization services, or psychosocial rehabilitation services;
- (4) Provid[ing] screening for patients being considered for admission to State mental health facilities to determine the appropriateness of this admission; and
- (5) Meet[ing] applicable licensing or certification requirements for CMHCs in the State in which it is located.

The regulation at 42 C.F.R. § 410.2 defines partial hospitalization services as “a distinct and organized intensive ambulatory treatment program that offers less than 24-hour daily care and furnishes the services described in § 410.43.” Those services include services that are reasonable and necessary to an individual’s diagnosis and active treatment; are reasonably expected to improve or maintain an individual’s condition and functional level and to prevent relapse or hospitalization; and include such services as individual and group therapy (with physicians, psychologists, or other mental health professionals as authorized by state law), occupational therapy by a qualified therapist, services of social

workers, psychiatric nurses and other staff trained to work with psychiatric patients, therapeutic drugs and biologicals, individual activity therapies not primarily recreational or diversionary, family counseling (whose primary purpose is to treat the individual), patient training and education related to the individual's care and treatment, and diagnostic services.

The regulations also authorize a CMHC to provide partial hospitalization services "under arrangements" with another entity. 42 C.F.R. § 410.110. In the preamble to the regulations, CMS defined an "arrangement" as a situation in which a CMHC makes contractual arrangements with another entity or practitioner to come into the CMHC and furnish partial hospitalization services, and under which payment for such services is made to the CMHC. 59 Fed. Reg. 6570, at 6573 (1994). In section 3007 of the Medicare Intermediary Manual, CMS explained that a provider furnishing services "under arrangements" must supervise and maintain professional responsibility over the services arranged. CMS Ex. 2.

The version of the Medicare Program Integrity Manual in effect at the time Petitioner's application was denied, lists as a reason for denial that an "applicant does not have license(s) or is not authorized by the Federal/State/local government to perform the services for which it intends to render. (In the denial letter or recommendation to deny, list appropriate citations, e.g., § 1861(r) or § 1861(s) of the Act)." CMS Ex. 3, at 2 (Program Integrity Manual, Chapter 10, 14.3 - Denials - (Rev. 41, 05-23-03)).²

IV. Findings of Fact, Conclusions of Law, and Discussion

I make findings of fact and conclusions of law to support my decision in this case. I set forth each finding below, in italics, as a separate heading. I discuss each finding in detail.

A. In the absence of objection, I adopt the material facts set forth in Petitioner's brief.

Petitioner's brief recites a series of facts it asserts are apparently not disputed by CMS. P. Br. at 1-7. Further, Petitioner agrees to waive a hearing and accept a decision on the record if these facts are adopted. P. Br. at 18. I find CMS has not materially objected to the facts asserted by Petitioner in its brief, and I thus accept and adopt the facts set forth by Petitioner. These facts, taken from Petitioner's brief, are set forth below.

² CMS states that in the current version of the Program Integrity Manual, this section has been re-codified at Chapter 10, 6.2, Reason 5, and a citation to 42 C.F.R. § 424.530(a)(5) has been added. CMS Reply, at 2.

Petitioner's owner, Dr. Wisdom, a licensed psychiatrist, was the Medical Director of a hospital community psychiatric rehabilitation program, which included a partial hospital program that was to be closed. In response to the closure, in 1992, Dr. Wisdom established a CMHC called Solutions Mental Health Center (Solutions) which, in 1993, was granted the Medicare provider number 26-4623 to participate in Medicare as a CMHC providing partial hospitalization services. Solutions Medicare agreement was terminated in 1994 when the DMH determined that it did not meet all requirements of a CMHC because it could not screen patients being considered for admission to State mental health facilities to determine the appropriateness of such admission. Solutions did not appeal this decision.

Missouri law (sections 630.705 through 630.793 Mo. Rev. Stat. (1999)) gives the DMH the authority to establish minimum requirements for CMHCs. Prior to 1994, the DMH established a system of 25 CMHCs, as designated agents by contract with the DMH, which CMHCs were responsible for screening patients within their geographic areas for entry into Missouri's system of psychiatric services. In 1994, Solutions entered into a contract with North Central Community Mental Health Center (North Central) to provide screening services as required by the DMH. North Central was the administrative agent for a certain area and responsible for screening patients within that area. Petitioner notes that, in northern Missouri, inpatient psychiatric services are available in only three counties, and no counties have partial hospitalization services. Petitioner asserts at least 18 northern Missouri counties lack inpatient and partial hospitalization psychiatric services. If enrolled, Petitioner intends to provide partial hospitalization services in northern Missouri.

Since 1994, the DMH has refused to approve the applications of Solutions, or Petitioner, Green Hills, to operate a CMHC, on the grounds that they did not meet the minimum requirements of a CMHC because they were not one of the 25 agents authorized to screen patients for admission into the state mental health system. Specifically, in 2004, Dr. Wisdom, the sole owner of Solutions and of Petitioner, applied to reinstate Solutions's original provider number or, in the alternative, to establish a new provider number under Petitioner's name.

By letter dated January 31, 2005 (CMS Ex. 1, at 61-62) and by letter dated February 25, 2005 (CMS Ex. 1, at 41-42) Petitioner was notified that its enrollment application had been denied. By letter dated March 23, 2005, Mary Tansey, General Counsel for the DMH, explained the basis for the denial. She stated that the DMH was exercising its authority to designate its administrative agents as the entry and exit points for the service delivery system and, since Petitioner was not a designated agent, Petitioner was not eligible to operate a CMHC. CMS Ex. 15. Petitioner requested an explanation for what it needed to do to operate as a CMHC. P. Ex. 16. Attorney General Tansey responded by

offering an outline of the applicable law applying to a CMHC interested in operating a partial hospitalization program and concluded that a CMHC had already been designated for the geographic area that Petitioner intended to operate in. Therefore, Petitioner was not eligible to be a CMHC. P. Br. at 1-7.

B. CMS is authorized to deny Petitioner enrollment in Medicare as a CMHC.

CMS argues that to be a provider a CMHC must meet the requisite licensing or certification requirements in the state in which it is located. It must provide certain services, which can be provided under arrangement with another entity. CMS asserts that in Missouri the State identifies and designates CMHCs. Missouri has specifically declined to designate Petitioner as a CMHC and Petitioner is thus not licensed, certified, or otherwise authorized to operate a CMHC.³

In its brief, Petitioner argues that it has been denied due process because it did not receive adequate notice of why CMS was denying enrollment to Petitioner; that its application cannot be denied because the DMH has not designated it as an administrative agent for screening patients for entry into the mental health system; and that its application to enroll in Medicare cannot be denied because it is not licensed or certified to operate as a CMHC.

1. Petitioner received adequate notice.

Petitioner asserts first that CMS did not give it adequate notice of why it was denying enrollment. Petitioner refers to a February 25, 2005 letter which recommended that Petitioner's application to enroll in the Medicare program be denied because: 1) "Medicare Program Integrity Manual, Chapter 10 - Healthcare/Provider/Supplier Enrollment Section 14.3 - Denials - (Rev. 41, 05-23-03)";⁴ and 2) "The applicant does not

³ CMS also states that even if Petitioner had a valid license it would have to have undergone a site visit before it could be certified as a CMHC. Petitioner has argued that its due process rights were violated because it was not given notice that it had to have a site survey and that CMS is relying on this as a revised reason to deny its application. CMS Reply at 3; P. Br. at 12-13. I agree with CMS that the requirement for the survey is not a revised reason to deny Petitioner enrollment, but instead is another regulatory requirement that Petitioner must meet to be eligible for enrollment. However, in this case I do not need to reach that issue, as I find Petitioner did not meet the requirements for licensure or certification.

⁴ In footnote 4 of its brief, on page 11, Petitioner assumes a typographical citation error in the Medicare Program Integrity Manual. CMS clarifies in its reply brief that there was no typographical error. Specifically, CMS clarifies that the Medicare Program

have license(s) or is not authorized by the Federal/State/local government to perform the services for which it intends to render.” CMS Ex. 1, at 41-42. Petitioner argues that the first reason cited does not convey any information regarding a specific reason for denying the application, but merely refers to the denial section of the Manual. As to the second reason cited, Petitioner argues that it does not provide sufficient notice to satisfy procedural due process or the Manual requirement that all denial (or recommendation for denial) letters contain sufficient factual and background information so that the reader understands exactly why the denial occurred. Petitioner argues it is not enough to simply list one of the eight denial reasons. Further, Petitioner asserts that the letters it received from the DMH, signed by Ms. Tansey (P. Exs. 15 and 17), do not clarify why the DMH recommended to CMS that Petitioner’s application be denied.

Petitioner’s argument that it was denied due process because the denial letter did not provide sufficient notice for it to respond to the allegations is not convincing. The reason for the denial is clear. Petitioner had to meet the applicable licensing or certification requirements for the State in which it is located. Here, the State of Missouri, through the DMH, did not authorize Petitioner to act as a CMHC. The State specifically refused to support Petitioner’s application for a CMHC partial hospitalization program because the DMH had already designated other entities to act as its administrative agents in the geographic area Petitioner was seeking to provide services in. CMS Ex. 1, at 41-42, 61; P. Exs. 15, 17. Moreover, while Petitioner may not like the reasons the State of Missouri was not supporting its application, the State’s reasons for doing so are clear.

2. The State of Missouri has not licensed, certified or authorized Petitioner to act as a CMHC providing partial hospitalization services.

Petitioner argues that the Missouri decision to designate only 25 administrative agents as CMHCs was arbitrary and capricious and serves no legitimate purpose. Petitioner asserts that the law allows it to qualify for enrollment if it has a contract to provide screening services with an agency authorized by the state to provide screening services. Petitioner is under contract with North Central, and it asserts it is thus qualified and does not need to be one of the 25 agents designated by the DMH. P. Br. at 13-16. Although Petitioner may have an arrangement to provide such screening services (and thus may meet the first requirement under section 1861(ff)(3)(B) of the Act and section 1913(c)(1) of the PHSA that it provide screening services), Petitioner has not been licensed or certified or

Integrity Manual, Chapter 10 - Healthcare Provider/Supplier Enrollment Section 14.3 - Denials - (Rev. 41, 05-23-03) was replaced by the current Revision 175 on November 24, 2006, in which section 14.3 has been re-codified at section 6.2 and a citation to 42 C.F.R. § 424.530(a)(5) added. The part of the section in effect at the time of the issuance of the denial letter is in the record as CMS Ex. 3. CMS Br. at 1-2.

otherwise authorized to act as a CMHC by the State of Missouri, which is the reason Petitioner's application for enrollment was denied. While Petitioner may have an argument with the State of Missouri on this issue, I have no authority to decide Missouri law or how Missouri decides matters regarding its licensing, certification or authorization of CMHCs.

Petitioner argues further that it cannot be denied enrollment solely for the reason that it is not licensed or certified to operate as a CMHC by the State of Missouri. Petitioner asserts that Missouri law does not require Petitioner to be licensed, citing to section 630.705 Mo. Rev. Stat. (2000), which specifically defines the circumstances under which a CMHC be licensed. Petitioner asserts that the statute states that any facility caring for less than four persons whose care is not funded by the department does not have to be licensed. Petitioner asserts it fits within this exception. Furthermore, Petitioner asserts there is no requirement that an organization be certified to receive Medicare reimbursement. P. Br. at 16-18. Again, Petitioner's argument is with the State of Missouri. While Missouri law may allow Petitioner to so operate, federal law requires that to receive Medicare reimbursement Petitioner must be licensed or certified by the state. Moreover, as CMS points out, Missouri law also provides at section 630.735 Mo. Rev. Stat. (2006), that "[a]fter October 1, 1983, no person or governmental unit, acting separately or jointly with any other person or governmental unit, shall establish, conduct or maintain any residential facility or day program in this state for care, treatment, habilitation or rehabilitation of persons diagnosed as mentally disordered or mentally ill or day program for mentally retarded or developmentally disabled persons *unless the facilities or programs are licensed by the department.*" (Emphasis added). Thus, it is not clear that Petitioner could operate in the State of Missouri. However that issue is not relevant to my decision in the matter before me.

I also disagree with the argument Petitioner makes in its January 19, 2007 reply brief. Petitioner responds to a CMS argument (in the CMS Reply at 6) that section 630.620 of Mo. Rev. Stat. (2006) requires that facilities in which patients are placed must be licensed or certified. Petitioner asserts that the statute is directed at the DMH, not to independent, freestanding CMHCs seeking reimbursement for services. However, a reading of the statute indicates that a facility receiving a referral of a patient by the DMH must be licensed or certified. That would apply to a CMHC. Once again, Petitioner's argument would be with the State of Missouri. Federal law requires a CMHC to be licensed or certified by the state. Here, the State of Missouri has specifically determined not to license, certify, or otherwise authorize Petitioner to act as a CMHC.

V. CONCLUSION

Federal law requires that an entity applying for provider status as a CMHC providing partial hospitalization services must meet applicable licensing and certification requirements in the state in which it is located, and meet “such additional conditions” as specified by the Secretary. Act, section 1861(ff)(3)(B). Here the State of Missouri has specifically declined to recognize Petitioner as a CMHC and it was neither licensed or certified, or otherwise so authorized, by the State of Missouri. Thus, CMS was authorized to deny enrollment to Petitioner to participate in the Medicare program as a CMHC providing partial hospitalization services.

/s/

Alfonso J. Montano
Administrative Law Judge