

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Kind Heart Home Health Agency, Inc.,  
(PTAN: 457885)  
(NPI: 1932139185),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-631

Decision No. CR4820

Date: March 30, 2017

**DECISION**

Petitioner, Kind Heart Home Health Agency, Inc., is a home health agency located in Dallas, Texas, that, until recently, was enrolled in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) found that Petitioner was no longer operational at its designated location and revoked its Medicare provider number. Petitioner challenged that action, and, in a reconsidered determination dated October 20, 2014, the Medicare contractor upheld the revocation. Petitioner appeals.

For the reasons set forth below, I find that Petitioner Kind Heart was not operational at its designated location, and CMS therefore properly revoked its Medicare enrollment.

**Background**

Until June 9, 2014, Petitioner was enrolled in the Medicare program as a home health agency. *See* Social Security Act § 1861(o); 42 C.F.R. Part 484. In a letter dated July 25, 2014, the Medicare contractor, Palmetto GBA, notified Petitioner that its Medicare privileges were revoked and its provider agreement terminated, effective June 9, 2014.

According to the letter, the contractor took this action pursuant to 42 C.F.R. § 424.535(a)(5). Based on a June 9, 2014 site visit, the contractor found that the home health agency was no longer operating from its 10925 Estate Lane, Suite 240 location; it was therefore “no longer operational to furnish Medicare covered items or services” and “[was] not meeting Medicare enrollment requirements.” CMS Ex. 1.

Petitioner sought reconsideration. In a reconsidered determination, dated October 20, 2014, CMS upheld the revocation, concluding that the home health agency was not operational at the address listed in the PECOS (Provider Enrollment and Ownership System), which is the contractor’s electronic filing system. CMS Ex. 2. Petitioner now appeals that determination. 42 C.F.R. § 424.545.

On December 5, 2016, I convened a telephone hearing from the offices of the Departmental Appeals Board in Washington, D.C. Counsel appeared in Dallas, Texas, and the sole witness testified from Columbia, South Carolina. Transcript (Tr.) 4. Jennifer Mendola appeared on behalf of CMS and Angie N’Duka appeared on behalf of Petitioner. Tr. 4-5.

I admitted into evidence CMS Exhibits (Exs.) 1-7 and Petitioner’s (P.) Exs. 1-19. Tr. 7.

The parties filed prehearing briefs (CMS Br.; P.Br.), supplemental briefs, and post-hearing briefs (CMS Post-hrg. Br.; P. Post-hrg. Br.). CMS filed a post-hearing reply.

## **Discussion**

***CMS properly revoked Petitioner’s Medicare enrollment because the home health agency was not operational at its registered practice location.***<sup>1</sup>

Program requirements: To maintain its Medicare enrollment and billing privileges, providers (which include home health agencies) must be operational and comply with program requirements. *See* 42 C.F.R. §§ 400.202; 424.500; 424.505; 424.510; 424.516; 424.530. To be operational, the provider must, among other requirements, have a “qualified practice location” that is “open to the public for the purpose of providing health care related services.” It must be properly staffed, equipped, and stocked (based on the type of provider it is) to furnish those services. 42 C.F.R. § 424.502.

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<sup>1</sup> I make this one finding of fact/conclusion of law.

CMS may perform an on-site inspection to determine the provider's compliance with Medicare enrollment requirements. 42 C.F.R. §§ 424.510(d)(8); 424.517(a)(1). If, upon on-site review, CMS determines that the provider is no longer operational to furnish Medicare-covered items and services, it may revoke the provider's Medicare billing privileges. 42 C.F.R. § 424.535(a)(5)(i).

In this case, the parties agree that, prior to April 2013, Petitioner's practice location was 10925 Estate Lane, Suite 240, Dallas, Texas, which is the address it provided the CMS contractor when it revalidated its Medicare enrollment in January 2012. CMS Ex. 3 at 9, 22, 56; CMS Ex. 7 at 1 (Norman Decl. ¶ 8). On June 4 and 9, 2014, a field investigator working for the Medicare contractor went to that address to verify that the home health agency was operational. He found that it was not open for business. No staff were present. He observed no signs of customer activity. The facility did not appear to be operational. CMS Ex. 5.

Petitioner concedes that it was not operational at Suite 240 of the Estate Lane address. The home health agency moved to Suite 305 in the same building effective May 15, 2013. P. Ex. 15 (Uzo Decl.). Uzoma Uzo, the home health agency's administrator, maintains that "[a]t or around the time of this relocation," she advised the Medicare contractor of the move "by submitting an 855 with the relocation information." P. Ex. 15 (Uzo Decl.). Petitioner submits a copy of a CMS form 855A, dated April 15, 2013. P. Ex. 2 at 26.

The Medicare contractor has no record of receiving Petitioner's 855A in April 2013 or at any other time prior to the June 2014 site visits. On August 20, 2014, the contractor received two forms 855A, one dated April 15, 2013, and another dated August 15, 2014. CMS Ex. 7 at 1 (Norman Decl. ¶ 9); *see* P. Ex. 2 at 26; P. Ex 3 at 27.

Petitioner produced no reliable evidence that Administrator Uzo – or anyone else from the home health agency – timely mailed or otherwise conveyed the 855A to the contractor any time before June 2014. Petitioner submits no proof of mailing, dated mailing receipt, tracking document, or other reliable indicia of mailing. *See Viora Home Health, Inc.*, DAB No. 2690 at 10-12 (2016) (concluding that a home health agency's qualified practice location remained unchanged where it failed to produce documentary evidence that it submitted change-of-location information to the contractor, and it failed to explain why it did not produce that evidence).

