

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Eunice Terrell Boone,  
(O.I. File No. H-16-41928-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-88

Decision No. CR4853

Date: May 19, 2017

**DECISION**

Petitioner, Eunice Terrell Boone, ran an unlicensed assisted living facility in Mississippi. She pled guilty to exploiting a vulnerable person, in violation of state law. Based on this conviction, the Inspector General (IG) has excluded her for five years from participating in Medicare, Medicaid, and all federal health care programs, as authorized by section 1128(a)(2) of the Social Security Act (Act). Petitioner appeals the exclusion. For the reasons discussed below, I find that the IG properly excluded Petitioner Boone and that the statute mandates a minimum five-year exclusion.

**Background**

In a letter dated September 30, 2016, the IG notified Petitioner that she was excluded from participating in Medicare, Medicaid, and all federal health care programs for a period of five years because she had been convicted of a criminal offense related to the neglect or abuse of patients in connection with the delivery of a health care item or service. The letter explained that section 1128(a)(2) of the Act authorizes the exclusion. IG Ex. 1.

Petitioner timely requested review.

Each party submitted a written argument (IG Br.; P. Br.). The IG submitted five proposed exhibits (IG Exs. 1-5). With her brief, Petitioner submitted character references and photographs, which she did not mark as exhibits. In the absence of any objections, I admit into evidence IG Exs. 1-5. I decline to admit Petitioner's attachments because they are irrelevant, and I must exclude irrelevant or immaterial evidence. 42 C.F.R. § 1005.17(c). The IG submitted a reply brief (IG Reply).

The parties agree that an in-person hearing is not necessary. IG Br. at 6; P. Br. at 2.

## Discussion

***Petitioner must be excluded from program participation for a minimum of five years because she was convicted of a criminal offense related to the neglect or abuse of a patient in connection with the delivery of a health care item or service. Act § 1128(a)(2).<sup>1</sup>***

Under section 1128(a)(2) of the Act, the Secretary of Health and Human Services must exclude an individual who has been convicted, under federal or state law, of “a criminal offense related to neglect or abuse of patients, in connection with the delivery of a health care item or service . . . .” 42 C.F.R. § 1001.101(b). The “delivery of a health care item or service” includes providing any item or service to an individual to meet his or her physical, mental, or emotional needs or well-being, whether or not reimbursed by Medicare, Medicaid, or any federal health care program. *Id.*

Here, Petitioner Boone opened and ran an unlicensed “personal care home” in Stone County, Mississippi. The home housed a dozen or more men, most of whom were “severely mentally challenged.” IG Ex. 2. After receiving multiple complaints that the home's residents were abused and neglected, the Mississippi Department of Licensure contacted the State Attorney General. IG Ex. 2.

Following an investigation, the State Attorney General charged Petitioner Boone with 12 counts of felony exploitation, 12 counts of neglect, and one count of operating a facility without a license. IG Ex. 2 at 4; IG Ex. 3. On May 16, 2016, Petitioner pled guilty to one count of exploitation of a vulnerable adult. In that plea, she admitted that she ran an assisted living facility but did not provide its residents with adequate shelter, food, or otherwise meet their needs. She attributed this neglect to lack of funds. IG Ex. 4.

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

The court accepted her plea and sentenced her to ten years imprisonment, which it suspended, followed by five years probation. She was ordered to pay \$13,660.29 in restitution, a \$1,000 fine, and \$500 into the Pay Crime Victims Compensation Fund. IG Exs. 2, 5.

Petitioner admits that she was convicted of a criminal offense but denies that she did any harm. P. Br. at 2. She argues that she did not receive any funds from the Medicaid program,<sup>2</sup> denies the allegations made against her, and maintains that she cared for the residents as well as she could. But federal regulations preclude such a collateral attack on her underlying conviction:

When the exclusion is based on the existence of a . . . determination by another Government agency, or any other prior determination where the facts were adjudicated and a final decision was made, the basis for the underlying . . . determination . . . is not reviewable and the individual or entity may not collaterally attack it, either on substantive or procedural grounds, in this appeal.

42 C.F.R. § 1001.2007(d); *Marvin L. Gibbs, Jr., M.D.*, DAB No. 2279 at 8-10 (2009); *Roy Cosby Stark*, DAB No. 1746 (2000).

Petitioner's conviction falls squarely within the ambit of section 1128(a)(2). She was required to provide services to vulnerable adults in order to meet their physical, mental, and emotional needs or well-being, regardless of whether she was reimbursed by the Medicaid program. Because she did not provide adequate shelter, food, or medication, her offense is related to the neglect of a patient.

Petitioner Boone is therefore subject to exclusion. An exclusion brought under section 1128(a)(2) must be for a minimum period of five years. Act § 1128(c)(3)(B); 42 C.F.R. §§ 1001.102(a), 1001.2007(a)(2).

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<sup>2</sup> The residents of her home were all Medicaid recipients. IG Ex. 2 at 2.

**Conclusion**

For these reasons, I conclude that the IG properly excluded Petitioner from participating in Medicare, Medicaid, and all federal health care programs, and I sustain the five-year exclusion.

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge