Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Kessem Research and Consulting, PLLC,
(PTAN: 0A5327)
(NPI: 1992934046),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-17-124

Decision No. CR4881

Date: July 7, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its Medicare administrative contractor, revoked the Medicare enrollment and billing privileges of Petitioner, Kessem Research and Consulting, PLLC, because Petitioner was not operational at the practice location on record with CMS. Specifically, the practice location on record with CMS was a mailbox at a UPS Store. For the reasons stated herein, I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges.

I. Background

Petitioner is a medical practice that is solely owned by Uri Gedalia, M.D. Petitioner Brief (P. Br.)[1]; *see* Form CMS-855I CMS Exhibit (Ex.) 1 at 14. In connection with a

[1] Neither party submitted a paginated brief. While not explicitly required by the Civil Remedies Division Procedures or my December 1, 2016 Order, I note that pagination of briefs and other submissions facilitates reference to those filings. Since the parties have not paginated their briefs, I have not provided any pinpoint citations to the parties' briefs.

revalidation request (CMS Ex. 1 at 1) by Novitas Solutions (Novitas or "the contractor"), a Medicare administrative contractor, Petitioner submitted a Form CMS-855I enrollment application. CMS Ex. 1 at 3-37. At that time, Petitioner added a new practice location at 2429 Bissonnet Street, Suite 468, in Houston, Texas. CMS Ex. 1 at 17. Petitioner reported that this "practice location" is a "Group practice office/clinic," and reported that it "saw [its] first Medicare patient at this practice location" on October 1, 2013. CMS Ex. 1 at 17. In a cover letter Petitioner submitted with its revalidation application, Petitioner explained that its owner was "currently providing medical services as Kessem Research and Consulting, PLLC, at 2429 Bissonnet Street, Suite 468, in Houston, Texas, 77005." CMS Ex. 1 at 35. Petitioner also reported a correspondence address of 222 N Sepulveda Boulevard, Suite 2175, in El Segundo, California. CMS Ex. 1 at 5. Dr. Gedalia signed the certification statement, agreeing that he had "read the contents of the application" and did "certify that the information contained herein is true, correct, and complete . . . ." CMS Ex. 1 at 27.

On February 17, 2016, a site visit contractor visited Petitioner's reported address on Bissonnet Street, at which time he documented that the location was a UPS Store, and not a medical office, explaining: "This is a UPS Store location. Not a providers [sic] office." CMS Ex. 2 at 1. On May 31, 2016, Novitas sent Petitioner an initial determination informing it that its Medicare enrollment and billing privileges were being revoked retroactive to February 17, 2016, the date of the failed site visit, and that it was barred from re-enrollment in Medicare for a period of two years. CMS Ex. 3. The letter stated the following, in pertinent part:

> **42 [C.F.R. §]424.535(a)(5) - On Site Review**
>
> You are no longer operational to furnish Medicare covered items or services. A site visit conducted on February 17, 2016 at 2429 Bissonnet St. 468, Houston, TX 770015-1451 confirmed that you are non-operational.
>
> **42 [C.F.R. §]424.535(a)(9) - Failure to Report**
>
> You are no longer operational to furnish Medicare covered items or services. A site visit conducted on February 17, 2016 at 2429 Bissonnet St. 468, Houston, TX 77005-1451 confirmed that you are non-operational. You did not notify the Centers for Medicare & Medicaid Services of this change of practice location as required under 42 [C.F.R. §]424.516.

CMS Ex. 3 at 1 (emphasis in original).

On July 27, 2016, Petitioner submitted both a corrective action plan (CAP) and a request for reconsideration of the May 31, 2016 initial determination. CMS Ex. 4 at 55-59; 87-93. Petitioner's owner signed both documents and indicated it was represented by

counsel at that time. CMS Ex. 4 at 93. In its CAP, Petitioner requested that its "billing privileges be re-instated as of the date that [it] came into compliance or the date of this CAP, July 26, 2016." CMS Ex. 4 at 55. Petitioner also explained, in pertinent part:

> As remedial action, following CMS action to revoke Requestor's billing privileges, Requestor and Requestor's staff have since taken remedial action by receiving substantial training on Medicare Enrollment requirements, enrollment in PECOS and the required revalidation processes. Specifically, the staff has reviewed the Medicare rules a[n]d Program Integrity Manual provisions and concerning provider; acknowledges the applicable deadlines and filing requirements; and has taken additional steps to train and document staff to assure compliance which will result in periodic checking and confirmation of enrollment information on file with CMS. In addition, Requestor hired outside counsel and an enrollment consultant to assist in filing this CAP and training staff.
>
> * * *
>
> This was the result of miscommunication between Requestor and an outside entity providing enrollment assistance and did not serve to benefit Requestor financially or in any other way. In fact, Requestor has not billed Medicare for any services prior to the revocation.

CMS Ex. 4 at 57. In its request for reconsideration, Petitioner conceded that it had committed a "clerical error" and that it would have "corrected" its "enrollment address if given the opportunity to take corrective action." CMS Ex. 4 at 89. Petitioner contended that the revocation was a "draconian measure" and was "an abuse of discretionary power . . . ." CMS Ex. 4 at 89. Petitioner alleged that it "never received a <u>Notice of Possible Revocation of Medicare Billing Privileges ("Notice")</u> which would have provided Requestor an opportunity to file a <u>'Corrective Action Plan' </u>to update [its] enrollment information." CMS Ex. 4 at 89 (underline in original). Petitioner further argued that the "[f]ailure to update an address should result in deactivation—the temporary suspension of billing privileges, without terminating the provider agreement . . . ." CMS Ex. 4 at 89.

On September 20, 2016, Novitas issued an unfavorable reconsidered determination. CMS Ex. 5. The reconsidered determination stated the following:

> Revocation Reason: 42 [C.F.R. §]424.535(a)(5) – On Site Review
>
> Specifically on May 31, 2016, Novitas Solutions revoked your billing privileges effective February 17, 2016 due to the site visit at 2429 Bissonnet St, 468, Houston, TX 77002-1451. The site visit results on February 17, 2016 confirmed that you are non-operational.

> Revocation Reason: 42 [C.F.R. §]424.535(a)(9) – Failure to Report
>
> Specifically on May 31, 2016, Novitas Solutions revoked your billing privileges effective February 17, 2016 since Kessem Research and Consulting PLLC did not notify the Centers for Medicare & Medicaid Services (CMS) of this change of practice location as required under 42 [C.F.R. §]424.516.

CMS Ex. 5 at 1. The reconsidered determination explained that "Kessem Research and Consulting PLLC does not dispute the practice location of 2429 Bissonnet St, 468, Houston, TX 77005-1451 . . . is non-operational since this address is a UPS Store." CMS Ex. 5 at 3.

Petitioner, through counsel, submitted a request for an administrative law judge (ALJ) hearing dated November 17, 2016, that my office received on November 18, 2016.[2] On December 1, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order), at which time I directed the parties to each file a pre-hearing exchange consisting of a brief and supporting documents by specified deadlines. Order, § 4. I also explained that the parties should submit written direct testimony for any witnesses in lieu of in-person direct testimony. Order ¶ 8. In the Order, I explained that a hearing would only be necessary for the purpose of cross-examination of witnesses. Order, §§ 9, 10.

In response to my December 1, 2016 Order, CMS filed a brief and motion for summary judgment, along with five exhibits (CMS Exs. 1-5). Petitioner filed a brief and response to CMS's motion for summary judgment, and three exhibits (P. Exs. 1-3). As neither party has objected to any exhibits, I admit the exhibits into the record. Neither party has submitted the written testimony of any witness. Order, § 8. Because a hearing is not necessary for the purpose of cross-examination of any witnesses, I consider the record to be closed and the matter ready for a decision on the merits.[3] Order, §§ 9, 10.

II. Issue

Whether CMS has a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because Petitioner was not operational at the practice location on file with CMS and did not timely report a change in practice location.

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[2] Petitioner subsequently retained different counsel.

[3] As an in-person hearing to cross-examine witnesses is not necessary, it is unnecessary to further address CMS's motion for summary disposition.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(17), 498.5(*l*)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Findings of Fact, Conclusions of Law, and Analysis[4]

Petitioner is a "supplier" for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of supplier), 410.20(b)(1). In order to participate in the Medicare program as a supplier, entities must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke the enrollment and billing privileges of a supplier for any reason stated in 42 C.F.R. § 424.535. When CMS revokes a supplier's Medicare billing privileges, CMS establishes a reenrollment bar for a period ranging from one to three years. 42 C.F.R. § 424.535(c). Generally, a revocation becomes effective 30 days after CMS mails the initial determination revoking Medicare billing privileges, but if CMS finds a supplier to be non-operational, as it did here, the revocation is effective from the date that CMS determines that the supplier was not operational. 42 C.F.R. § 424.535(g).

On-site review is addressed in 42 C.F.R. § 424.535(a)(5). Pursuant to subsection 42 C.F.R. § 424.535(a)(5)(i), (ii), a supplier is non-operational if CMS determines upon an on-site review that it is "no longer operational to furnish Medicare covered items or services" or that otherwise fails to satisfy any Medicare enrollment requirement.

1. ***On February 17, 2016, a site visit contractor was unable to conduct a site visit of Petitioner's Bissonnet Street practice location, which was the practice location on file with Novitas at that time, because the location is a UPS Store and not a medical office.***

In December 2014, Petitioner submitted an enrollment application in response to the Medicare administrative contractor's request that it revalidate its enrollment. CMS Ex. 1. At that time, Petitioner reported that the Bissonnet Street location was a "Group practice office/clinic" (CMS Ex. 1 at 17) and explained in a cover letter that it was "currently providing medical services" at that location. Further, while the address was a mailbox at a UPS Store, Petitioner reported on its application that its location was a "suite," rather than a mailbox. CMS Ex. 1 at 17 (reporting "Suite 468" as "Practice Location Street Address Line 2 (Suite, Room, etc.)"). Despite the fact that the practice location was a mailbox, Petitioner reported a *different* correspondence address at which it wished to receive correspondence, 222 N Sepulveda Blvd in El Segundo, CA. CMS Ex. 1 at 5.

[4] My numbered findings of fact and conclusions of law appear in bold and italics.

On February 17, 2016, a site visit contractor attempted a "site verification survey" at the reported practice location on Bissonnet Street. CMS Ex. 2. The site visit contractor reported that "[t]his is a UPS Store location." CMS Ex. 2 at 1.

In seeking reconsideration of the determination revoking its enrollment, Petitioner did not dispute that it was not operational at the UPS Store address. Rather, Petitioner argued that "[t]he statute provides that all providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges (see 42 CFR §424.535(a)(1)))," and that "the opportunity to correct is **not appropriate** if the revocation is under paragraphs (a)(2), (a)(3), or **(a)(5)**."[5] CMS Ex. 4 at 87, 89 (emphasis added). Petitioner admitted that it did not practice at the location provided in the enrollment application, but rather, it practiced at other locations that were not identified in the enrollment information on file at the time of the February 17, 2016 site visit. CMS Ex. 4 at 89, 91 (list of 11 facilities where Petitioner provides services that were not included in the enrollment application).

Even though Petitioner previously acknowledged "deficiencies" in its enrollment application (CMS Ex. 4 at 55), that it committed a "clerical error" in its application (CMS Ex. 4 at 89), and that the "provider enrollment address on the 855i enrollment form only included the post office box for mailing" (CMS Ex. 4 at 89), Petitioner now argues in its brief that "CMS failed to produce evidence that a valid site verification visit had been performed," to include a lack of date and time-stamped photographs, and as a result, "[t]here simply is <u>no valid evidence</u> in this case to support its revocation decision." P. Br. (emphasis in original). Petitioner has never previously disputed that it was not operational at the Bissonnet Street UPS Store on February 17, 2016, and in fact, its current arguments contradict its previous statements. *See, e.g.,* CMS Ex. 4 at 57 ("There has been no harm to Medicare or Medicare patients as a result of [Petitioner's] omission of hospital practice locations on the 855I form for provider enrollment."); CMS Ex. 4 at 55 ("correspondence from CMS did not provide [Petitioner] an opportunity to file a CAP to correct the practice location and thereby avoid being deemed as 'non-operational' on a site-visit.").

The Bissonnet Street address Petitioner listed on its revalidation application is a UPS Store, and not a medical office or facility where it provided services to Medicare beneficiaries. The site visit contractor was unable to complete a site visit because he visited a mailbox, rather than the "Group practice office/clinic" that had been reported on the revalidation application. CMS Ex. 1 at 17.

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[5] I note that the revocation was based, in part, on 42 C.F.R. § 424.535**(a)(5)**. Petitioner therefore appears to concede that revocation is appropriate.

2. CMS has a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because it was not operational pursuant to 42 C.F.R. § 424.535(a)(5) at the practice location on file with CMS.

While Petitioner does not dispute that the address on Bissonnet Street is a UPS Store, it nonetheless contends that it was operational to see patients elsewhere and its enrollment and billing privileges should not have been revoked. P. Br.

A supplier is "operational" when it:

> has a qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked (as applicable based on the type of facility or organization, provider or supplier specialty, or the services or items being rendered) to furnish these items or services.

42 C.F.R. § 424.502. CMS may revoke a currently enrolled supplier's Medicare billing privileges in the following circumstance:

> Upon on-site review or other reliable evidence, CMS determines that the provider or supplier is either of the following-
>
> (i) No longer operational to furnish Medicare-covered items or services.
>
> (ii) Otherwise fails to satisfy any Medicare enrollment requirement.

42 C.F.R. § 424.535(a)(5)(i),(ii).

The regulatory definition of the term "operational" refers to the "qualified physical practice location" of a supplier, 42 C.F.R. § 424.502. When Petitioner was asked to revalidate in late 2014, Petitioner reported it was adding a physical practice location. CMS Ex. 1 at 17. Petitioner's owner signed the application and certified that its contents were "true, correct, and complete." CMS Ex. 1 at 27. CMS, in its performance of an on-site inspection "to verify that the enrollment information submitted to CMS or its agents is accurate and to determine compliance with Medicare enrollment requirements," discovered that Petitioner did not have an operational practice at the location on Bissonnet Street that it claimed was an office/clinic and a practice location. CMS Ex. 1 at 17; 42 C.F.R. § 424.517(a). In assessing that Petitioner was not operational at a practice location on Bissonnet Street, CMS attempted to inspect the "qualified physical practice location" that Petitioner provided and was on file with CMS at the time of the attempted site visit. 42 C.F.R. § 424.517(a).

Because the physical practice location on file with CMS was a UPS Store, and not a private office or medical facility, CMS had a legal basis to revoke Petitioner's enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(i). Petitioner was not operational at the UPS Store on Bissonnet Street. *See Care Pro Home Health Care*, DAB No. 2723 at 6 (2016) (holding that CMS lawfully revoked a supplier's Medicare enrollment based on its non-operational status at a single location); *see also Viora Home Health, Inc.*, DAB No. 2690 at 13 (2016) (holding that CMS properly revoked Medicare enrollment when a practice location of record was not operational upon onsite review). Unfortunately, even if Petitioner was operational elsewhere, it was not operational at the location reported on its enrollment application.

While Petitioner asserts that it provided services to patients at the 11 locations identified in its July 2016 request for reconsideration (*see* CMS Ex. 4 at 87; *see also* CMS Ex. 4 at 9-51), Petitioner listed only one practice location, the Bissonnet Street UPS Store, when it revalidated its Medicare enrollment in December 2014. CMS Ex. 1 at 17. Petitioner represented that this location was a "suite" and a "Group practice office/clinic," and further explained in a cover letter that it provided "medical services" at this location. CMS Ex. 1 at 17, 35. Petitioner's allegation in its brief that "it had reported this location to receive correspondence . . ." is unsupported, based on the fact that it claimed to provide services at that location and that it had treated its first Medicare beneficiary at that location on October 1, 2013, and provided a *different* "[c]orrespondence [a]ddress" in the same application.[6] CMS Ex. 1 at 5, 17, 35; *see also* P. Br. (arguing that "the regulations do not require a site visit to a location that is used to receive correspondence . . ."). While Petitioner alleges that it had provided "accurate data regarding its practice location" and was not required to list a practice location due to the nature of its practice, Petitioner is mistaken. Petitioner gave no indication that it was providing a mailbox location as a correspondence address, and clearly represented that it provided "medical

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[6] Section 2 asks the enrollee, under the subsection for "Correspondence Address," to provide the following information: "Provide contact information for the person shown in Section 2A above. Once enrolled, the information provided below will be used by the fee-for-service contractor if it needs to contact you directly. This address cannot be a billing agency's address." *See* CMS Ex. 1 at 5.

services" at a suite at a "Group practice office/clinic" location on Bissonnet Street.[7] CMS Ex. 1 at 5, 17, 35. Further, if Petitioner had unique circumstances with respect to its practice location(s), as it appears to allege in its brief, Petitioner easily could have explained "any unique circumstances regarding your practice locations or the method by which you render health care services . . . ." CMS Ex. 1 at 20 (Subsection H of Section 4 of Form CMS-855I ("Unique Circumstances")). However, Petitioner did not do so and provided no information in that section. CMS Ex. 1 at 20.

Petitioner argues that it should not have been required to report a "brick and mortar" office and that the contractor's determinations are "arbitrary and capricious." P. Br. I need not address Petitioner's policy arguments; the simple fact is that Petitioner reported that it operated a medical practice, provided medical services, and treated Medicare beneficiaries at a location on Bissonnet Street, and when a site visit contractor went to that location, he discovered that Petitioner was not operational at that location. Likewise, Petitioner argues that it intended for the listing of the Bissonnet Street address to be nothing more than a mailing address. P. Br. And as previously explained,

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[7] Petitioner's use of the word "suite" on its enrollment application and accompanying cover letter is not insignificant. CMS Ex. 1 at 17; *see Merriam-Webster* (online edition), defining suite as "a group of rooms occupied as a unit," *https://www.merriam-webster.com/dictionary/suite* (last visited June 16, 2017); *see also* CMS Ex. 1 at 32 (physician license listing "Suite 468"); 34 (Drug Enforcement Agency certificate listing "Suite 468"); 35 (letterhead for Petitioner's practice listing "Suite 468"). The UPS Store, among other services, rents out mailboxes to individuals and business, and the evidence does not support that Petitioner rented anything other than a mailbox at the UPS Store. While it may be a practice for some UPS Store box holders to list their mailbox address as a "suite," this does not appear to be a requirement established by the UPS Store. In fact, the UPS Store's website provides the following information regarding the mailing address of business mailboxes:

> Your mailing address will be the address of The UPS Store location, with either PMB (private mailbox) or the pound symbol (#) designating your individual box. Instead of "The UPS Store," your name appears first.
>
> Example:
Joe Smith
PMB XXX or # XXX
12345 Somewhere Street
Some City, Some State Some ZIP

https://www.theupsstore.com/mailboxes/business-mailboxes (last visited June 16, 2017).

Petitioner clearly knew that it could report a correspondence address on its enrollment application, and it did so in Section 2 of the application. CMS Ex. 1 at 5. Petitioner has not demonstrated it was operational at the reported Bissonnet Street practice location as contemplated by section 424.517(a).[8]

Petitioner argues that the application's instructions were unclear and that CMS does not have consistent practice location reporting requirements for all physicians, urging that "CMS must be prohibited from requiring one enrolled provider or supplier from having a brick and mortar office location capable of passing a site verification visit . . . when other providers and suppliers are not required to do so." P. Br. Petitioner unpersuasively blames CMS policies, rather than its own admitted error, for its revocation based on not being operational at the location it claims to have provided services to Medicare beneficiaries.[9] Similarly, Petitioner argues it is unfair that it must comply with the instructions on the form, and alleges that the form's instructions are arbitrary and do not comply with CMS policy. P. Br. However, Section 4 of the application form quite clearly instructs that "[a]ll locations disclosed on claims forms should be identified as practice locations." CMS Ex. 1 at 15. Further, the form unambiguously directs: "[I]f you are adding a new practice location, the date you should provide should be the date you saw your first Medicare patient at this location." CMS Ex. 1 at 17 (emphasis omitted). Thus, it should be quite clear to an enrollee, as long as the enrollee reads and follows the instructions on the application, that it should report practice locations where it actually renders services to beneficiaries, which presumably rules out commercial mailboxes, and that the enrollee should report the same location(s) where it provides the services that are billed on claim forms submitted to Medicare. CMS Ex. 1 at 15. While Petitioner complains that the circumstances of its practice do not comport with providing a practice location on the enrollment application and, it attempts to analogize irrelevant situations and authorities, Petitioner has not cited to *any* authority supporting that CMS's request for specific *practice* location information on the Form CMS-855I is contrary to law. Further, even if the instructions for completing Section 4 of the application were

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[8] Section 2 of the Form CMS-855I enrollment application directs the applicant to provide a "correspondence address." *See* CMS Ex. 1 at 5. If Petitioner wished to receive its mail at the Bissonnet Street UPS Store, it simply could have listed the UPS Store as a correspondence address without the need to inaccurately provide practice location information in Section 4 of the application.

[9] For instance, Petitioner points out that physicians who only make home visits do not have to list every home they visit as a practice location. Without dwelling on this unpersuasive argument, I will note that Petitioner, in order to comply with the directives of the application, would have been required to list the 11 locations where it provides services. It is possible that a physician who exclusively makes home visits could have hundreds, or even thousands, of practice locations over the course of year, and such a physician would likely need to report new practice locations on a daily basis.

unclear, which they are not, the form required the enrollee to report the specific date it "saw [its] first Medicare patient at this practice location;" Petitioner responded by stating it had, in fact, first seen a Medicare patient at the UPS Store location on October 1, 2013. CMS Ex. 1 at 17. Further, the form specifically limits practice locations to one of the following: Group practice office/clinic; hospital; retirement/assisted living community; skilled nursing facility and/or nursing facility; or some other health care facility, and specifically excludes post office boxes.[10] Despite these instructions, Petitioner still reported the UPS Store as its only practice location, without opting to explain any unique circumstances. CMS Ex. 1 at 20. Petitioner has not demonstrated any flaw in the clear instructions in the enrollment application, or that the information required of enrollees regarding their practice locations is contrary to law.

My determination is not premised on whether CMS's action was required, but rather, whether CMS or its contractor has a "legal basis" for the revocation action.[11] Based on Petitioner's report that it practiced at the location of the UPS Store, CMS has a legal basis for revocation. *Letantia Bussell, M.D.*, DAB No. 2196 at 10 (2008); *see Razzaque Ahmed, M.D.*, DAB No. 2261 at 19 (2008), *aff'd*, *Ahmed v. Sebelius*, 710 F. Supp. 2nd 167 (D. Mass. 2010) (stating if CMS establishes that the regulatory elements necessary for revocation are satisfied, an ALJ may not substitute his or her "discretion for that of CMS in determining whether revocation is appropriate under the circumstances.").

While Petitioner faults previous ALJ decisions for lacking "the level of dissection of the rules and the legal analysis that Petitioner urges is required to arrive at a decision" (P. Br.), Petitioner fails to support this assertion. Petitioner essentially ignores that it previously acknowledged it had committed error in completing its application, and also fails to acknowledge that it affirmatively reported that it treated beneficiaries at a non-operational practice location.[12] Petitioner has not demonstrated that CMS and its contractor improperly revoked its enrollment based on a failed site visit to a location where it claimed to be providing services. The revocation of Petitioner's enrollment and

[10] The enrollment application excludes only one type of practitioner from the requirement to report the actual location where services are provided, stating: "If you *only* render services in patients' homes (house calls), you may supply your home address in this section if you do not have an office." The enrollment application explains that this address is for administrative purposes only and that all services are rendered in patient's homes." CMS Ex. 1 at 16 (Section 4(H)).

[11] Petitioner has acknowledged that CMS has the "discretionary power" to revoke enrollment in such a situation. CMS Ex. 4 at 89.

[12] I reiterate that Petitioner's current stance is not entirely consistent with its previous statements. *See* CMS Ex. 4 at 55-59; 87-93.

billing privileges, and my affirmance of that determination, is proper based on Petitioner's failure to be operational at the location it claims to have treated beneficiaries.

3. Petitioner failed to notify CMS or its administrative contractor of a change of practice location within 30 days of the location change.[13]

While Petitioner does not specifically address the basis for its revocation under 42 C.F.R. § 424.535(a)(9), I will construe that Petitioner disputes this basis. The regulations at 42 C.F.R. § 424.516(d)(1)(iii) require that physician and nonphysician practitioner organizations report, within 30 days, a change in practice location to their Medicare contractor. Failure to timely report a change in practice location subjects a practice to revocation of its Medicare billing privileges. 42 C.F.R. § 424.535(a)(9). Petitioner does not contend that it informed Novitas that it began practicing at any of the 11 locations listed in its reconsideration request within 30 days of when it began practicing at those locations. CMS Ex. 4 at 89, 91.

Petitioner cannot escape responsibility for its failure to report its change of practice location from the Bissonnet Street address to other locations, and Petitioner is responsible for knowing the rules pertaining to Medicare suppliers. Therefore, I conclude that Petitioner failed to timely notify Novitas of the changes in practice location within 30 days as required, and that this failure serves as a legitimate basis to revoke its Medicare billing privileges. 42 C.F.R. § 424.516(d)(1)(iii); 42 C.F.R. § 424.535(a)(9).

V. Conclusion

I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges, along with the two-year bar to re-enrollment.

/s/
Leslie C. Rogall
Administrative Law Judge

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[13] I recognize that the fact that Petitioner was non-operational at the Bissonnet Street address, alone, is a sufficient basis for CMS to have revoked its Medicare enrollment and billing privileges. I will nonetheless briefly address Petitioner's failure to timely report the location change for its practice.