

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Alicia Chilito, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3897

Decision No. CR4576

Date: April 7, 2016

DECISION

I sustain the determination of a Medicare contractor, as affirmed on reconsideration, to revoke the Medicare enrollment and billing privileges of Petitioner, Alicia Chilito, M.D., with an associated bar on re-enrollment for a period of three years. Revocation is authorized by 42 C.F.R. § 424.535(a)(12).

I. Background

Petitioner filed a request for hearing in order to challenge a reconsideration determination, dated June 26, 2015, affirming the revocation of her Medicare participation and billing privileges.¹ The Centers for Medicare & Medicaid Services (CMS) filed a brief and 20 proposed exhibits (CMS Ex. 1 – CMS Ex. 20) supporting the determination. Petitioner filed a brief and 13 proposed exhibits (P. Ex. 1 – P. Ex. 13) in response. I receive both parties' exhibits into the record.

¹ In its reconsideration determination, CMS cited 42 C.F.R. §§ 424.535(a)(2) and (a)(12) as the bases for its action. Because I have upheld the revocation under 42 C.F.R. § 424.535(a)(12), I do not address the alternative basis.

CMS offered no witness testimony in support of its arguments. Petitioner offered her own testimony, in affidavit form, as P. Ex. 13. CMS has not requested an in-person hearing for the purpose of cross-examining Petitioner. Consequently, there is no need for a hearing, and I decide the case based on the parties' written exchanges.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether CMS is authorized to revoke Petitioner's Medicare participation and billing privileges under the authority of 42 C.F.R. § 424.535(a)(12).

B. Findings of Fact and Conclusions of Law

CMS may revoke a supplier's Medicare participation and billing privileges in the circumstance where a State Medicaid Agency has terminated that supplier's privileges, so long as the supplier has exhausted his or her appeal rights from the State action. 42 C.F.R. § 424.535(a)(12).

The evidence establishes unequivocally that the Florida Agency for Health Care Administration (ACHA), the State Medicaid Agency, terminated Petitioner's participation in Florida's Medicaid program on January 17, 2014. CMS Ex. 5; Petitioner's Request for Review at 3. ACHA issued a final termination order on March 26, 2014. Petitioner's appeal rights to challenge that termination are exhausted. CMS Ex. 6 at 1; Petitioner's Request for Review at 3. These facts provide grounds for CMS and its contractor to revoke Petitioner's Medicare enrollment and billing privileges. Her State Medicaid billing enrollment has been terminated and her appeal rights are exhausted. That satisfies the criterion for revocation at 42 C.F.R. § 424.535(a)(12).

Petitioner argues, essentially, that the State termination action is unfair. She contends that there has been a long history of communication failures between her and ACHA and CMS, that adverse actions taken by these agencies were based on misunderstandings, and that she has always acted in good faith. She contends that the 2014 revocation of her Medicaid participation by ACHA was based on a 2011 termination of her Medicare enrollment by CMS that she contends was improper. Petitioner's brief at 5. She asserts that CMS should not revoke her Medicare participation and billing privileges predicated on what she contends are previous unfair actions by CMS or ACHA.

I find these arguments to be irrelevant. The undisputed facts are that ACHA terminated Petitioner's participation in Florida's Medicaid program and that Petitioner's appeal rights to challenge the State action have been exhausted. Those facts are sufficient to give CMS grounds for revoking Petitioner's Medicare participation and billing privileges.

