

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Cornerstone Medical, Inc.,  
(NPI: 0525630009),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-14-1788

Decision No. CR3642

Date: February 11, 2015

**DECISION**

This matter is back before me on remand from the Departmental Appeals Board. *Cornerstone Medical, Inc.* DAB No. 2585 (2014). I am instructed to articulate whether, on January 8 and 11, 2013, Petitioner, a supplier of durable medical equipment, was “accessible and staffed during [its] posted hours of operation” and thus compliant with 42 C.F.R. § 424.57(c)(7)(i)(C).

I adopt in its entirety my earlier decision – *Cornerstone Medical, Inc.*, DAB CR3022 (2013) – except in the following respects:

1) I amend the second finding of fact/conclusion of law to read:

***2. Petitioner has established that the supplier was operational, accessible, and staffed during its posted hours of operation, in compliance with 42 C.F.R. § 424.57(c)(7)(i)(C).***

2) I add this final paragraph to the discussion section:

I recognize that the door was locked when the inspector arrived. However, a locked door, by itself, does not render a facility inaccessible. Although the inspector writes that he knocked “a couple of times,” he does not specify what that entailed; he does not indicate that he waited a reasonable – or any – time before departing. CMS Ex. 5. I am also satisfied that Assistant Branch Manager Shirley was physically present in the facility and available to answer the door and attend to customers, if given a reasonable opportunity to do so.<sup>1</sup>

/s/  
Carolyn Cozad Hughes  
Administrative Law Judge

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<sup>1</sup> As noted above, without considering Petitioner’s proposed exhibits, I find Petitioner’s evidence sufficient to establish that the facility was operational (and thus accessible and staffed) during its posted hours of operation. Among the proposed exhibits are delivery documents, which indicate that, on each of the days in question, a facility employee accepted and signed for deliveries. I could reasonably infer that accepting delivery entails answering the door, which would, of course, buttress Petitioner’s position. P. Ex. 1 at 1, 4.