Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Premier Integrity Solutions, Inc.
(NPI: 1982047700, 1992047179)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-764

Decision No. CR5018

Date: February 1, 2018

DECISION

CGS Administrators, LLC (CGS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Petitioner, Premier Integrity Solutions, Inc., effective December 18, 2016. CMS upheld that determination in a reconsidered determination. CMS and CGS determined that, pursuant to Medicare program regulations, Petitioner had provided false or misleading information in a Medicare enrollment application. For the reasons stated below, I affirm the revocation of Petitioner's Medicare enrollment and billing privileges.

I. Background and Procedural History

Petitioner is a clinical laboratory that was enrolled as a supplier in the Medicare Program. *See* CMS Exhibits (Exs.) 1, 5. On January 29, 2015, Petitioner entered into a settlement agreement with CMS in which it acknowledged that its enrollment had been revoked on October 24, 2013, and that the revocation of its enrollment "shall stand for the period October 24, 2013 through October 23, 2014." CMS Ex. 6 at 1.

On or about September 16, 2016, Petitioner updated its enrollment information through the internet-based Provider Enrollment, Chain and Ownership System (PECOS). CMS Ex. 1. In response to a question in Section 3 of the application asking whether "a final adverse action [had] been imposed against an applicant under any current or former name or business entity," Petitioner answered, "No."[1] CMS Ex. 1 at 2. Petitioner's Chief Financial Officer, Angela Ragle, who is identified as an authorized official on the application, electronically signed and certified the enrollment application. CMS Ex. 1 at 3, 7.

By letter dated November 18, 2016, CGS notified Petitioner that its Medicare enrollment and billing privileges would be revoked effective December 18, 2016, explaining:

> 42 [C.F.R. §]424.535(a)(4) – False or Misleading Information
>
> On your Change of Information application, signed by Authorized Official Angela Ragle on September 16, 2016, you verified as true that Premier Integrity Solutions Inc[.] had no final adverse legal action history. However, Premier Integrity Solution Inc[.]'s Medicare billing privileges were previously revoked from Medicare based on a settlement agreement related to a one year suspension. Your Medicare billing privileges were revoked from Medicare effective 10/24/2013 through 10/24/2014. A prior Medicare-imposed revocation of any Medicare billing privileges is a final adverse action, as defined by 42 [C.F.R. §]424.502.

CMS Ex. 3 at 1 (emphasis omitted). CGS also informed Petitioner that it would be barred from re-enrolling in the Medicare program for a period of three years, effective 30 days from the postmark date of the letter. CMS Ex. 3 at 1-2.

On January 11, 2017, Petitioner, through counsel, requested reconsideration of the initial determination revoking its Medicare enrollment and billing privileges. CMS Ex. 4. Petitioner argued that a third party, Bluegrass Credentialing & Consulting, LLC (Bluegrass), prepared the enrollment application, and that Bluegrass "**negligently** failed to disclose the 2013 revocation on the Application." CMS Ex. 4 at 4 (emphasis in original). Petitioner further contended that "Bluegrass negligently failed to include the instructions portion of the filing (*i.e.* page 12 of the Form CMS-855B) when it provided a copy of the Application to Premier for review." CMS Ex. 4 at 4. Petitioner explained that "[i]n the absence of these instructions, however, Petitioner reasonably concluded that

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[1] The enrollment application instructs an applicant to list "[a]ny Medicare revocation of any Medicare billing number" as a final adverse legal action in Section 3 of the enrollment application. CMS Ex. 2 at 13 (blank Form CMS-855B application). Petitioner acknowledged that "[t]he instructions discuss what exclusions, revocations must be reported . . . ." CMS Ex. 4 at 4.

the 2013 revocation did not need to be disclosed on the Application." CMS Ex. 4 at 4. Petitioner further argued that 42 C.F.R. § 424.535(a)(4) is an "invalid" regulation and that any revocation based on this purportedly invalid regulation is "void." CMS Ex. 4 at 5. Among its arguments, Petitioner contended that the Secretary "substantially altered" section 424.535(a)(4) at the time of issuance of the final rule implementing the regulation.[2] CMS Ex. 4 at 7.

On April 11, 2017, CMS's Provider Enrollment & Oversight Group issued a reconsidered determination in which it determined that CGS properly revoked Petitioner's Medicare billing privileges "due to [Petitioner's] certification as 'true,' false or misleading information on its September 16, 2016 change of information application when [Petitioner] did not list the October 2013 revocation of its Medicare billing privileges as a previous final adverse action." CMS Ex. 5 at 3. CMS, in responding to Petitioner's arguments, explained that "[w]hile [Petitioner's] credentialing was outsourced to Bluegrass, [Petitioner] still maintained a responsibility to ensure that all information submitted on its behalf in its CMS-855B Medicare enrollment application was complete, truthful, and accurate." CMS Ex. 5 at 3. CMS further explained that Petitioner, "as the supplier enrolled in the Medicare program, was responsible for the maintenance of its Medicare enrollment and for abiding by the Medicare regulations." CMS Ex. 5 at 3. CMS also stated that it found no merit in Petitioner's argument that 42 C.F.R. § 424.535(a)(4) is an invalid regulation. CMS Ex. 5 at 3.

Petitioner, through counsel, filed a timely request for a hearing (RFH) on May 31, 2017.[3] On June 13, 2017, I directed the parties to file pre-hearing exchanges, consisting of a

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[2] As I will address below, I need not address this argument because I cannot invalidate a regulation. However, I briefly note that the text of section 424.535(a)(4) in both the proposed rulemaking and the final version of the regulation is substantively identical. The proposed regulatory language, as relevant here, was as follows: "(4) *False or misleading information.* The provider or supplier certified as 'true' false or misleading information on the CMS 855 to be enrolled or maintain enrollment in the Medicare program." 68 Fed. Reg. 22,064, 22,085 (Apr. 25, 2003). The same sentence in the final rule contains nearly verbatim language, stating: "(4) *False or misleading information.* The provider or supplier certified as 'true' misleading or false information on the enrollment application to be enrolled or maintain enrollment in the Medicare program." 71 Fed. Reg. 20,754, 20,780 (Apr. 21, 2006). It is unclear, based on the plain language of the proposed and final versions of the regulation, how "[t]he Regulation broadened this scope dramatically to punish every instance in which incorrect information is supplied . . . ." Petitioner Brief (P. Br.) at 7.

[3] Petitioner appended several documents to its RFH, but did not submit any of these documents as proposed exhibits; therefore, Petitioner has not sought inclusion of these documents in the evidentiary record. *See* Acknowledgment and Pre-Hearing (Order),

brief by CMS and a response brief by Petitioner, along with supporting evidence, in accordance with specific requirements and deadlines. Pre-Hearing Order, §§ 4, 5.

CMS filed a motion for summary judgment (CMS Br.) in lieu of a brief, along with six exhibits (CMS Exs. 1 - 6); *see* Pre-Hearing Order, § 4(c)(i) (authorizing filing of a motion for summary judgment as part of a pre-hearing exchange). Petitioner submitted a response to CMS's motion for summary judgment and a cross-motion for summary judgment (P. Br.). In the absence of any objections, I admit CMS Exs. 1 through 6 into the evidentiary record.

In my Pre-Hearing Order, I advised the parties that they must submit written direct testimony for any proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Pre-Hearing Order, §§ 8-10. Neither party has listed any witnesses or provided any written direct testimony. Consequently, there are no witnesses for the parties to cross-examine at a hearing. The record is closed, and the case is ready for a decision on the merits.[4]

II. Issue

The issue is whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) based on the submission of false or misleading information in a Medicare enrollment application.

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§§ 4, 5 (requiring each party to submit a list of proposed exhibits and instructing that I "may refuse to receive an exhibit or exhibits into evidence that are not filed in accordance with the requirements of this Order"). One of the appended documents is a "confidential questionnaire" that Petitioner completed at the request of Bluegrass, in which Petitioner provided a response to a question asking about adverse actions involving "the Medicare or Medicaid program, or in regard to federal and other federal or state governmental health care plans of programs." Even though Bluegrass requested that Petitioner "attach detailed explanations for each yes answer," Petitioner vaguely reported that it had been "'revoked' [and] then reinstated," without providing any specific information, such as the health care plan or program from which it had been revoked, the specific date of its revocation, and the duration of the revocation. Despite Petitioner's vigorous assertions to the contrary, Petitioner has not submitted evidence that it fully disclosed its prior revocation to its credentialing company, even though Bluegrass had requested that it provide a *detailed explanation* of such an adverse action.

[4] As an in-person hearing to cross-examine witnesses is not necessary, it is unnecessary to further address the parties' motions for summary judgment.

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[5]

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, a supplier must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke a supplier's enrollment and billing privileges for any reason stated in 42 C.F.R. § 424.535(a).

CMS may revoke a supplier's enrollment if the supplier certifies as "true" misleading or false information, as set forth in 42 C.F.R. § 424.535(a)(4), which currently provides:

> (4) False or misleading information. The provider or supplier certified as "true" misleading or false information on the enrollment application to be enrolled or maintain enrollment in the Medicare program.

42 C.F.R. § 424.535(a)(4) (emphasis omitted).

1. Petitioner has been the subject of a final adverse legal action, as defined by 42 C.F.R. § 424.502, and a Medicare enrollment application asks a supplier to report whether it has been the subject of a final adverse action.

Pursuant to the definitions provided in 42 C.F.R. § 424.502, a final adverse action includes a "Medicare-imposed revocation of any Medicare billing privileges." Petitioner does not dispute that its Medicare billing privileges were revoked from October 24, 2013 through October 23, 2014. P. Br. at 2 (Petitioner's acknowledgement that it "had a final adverse legal action"); *see* CMS Ex. 6 at 1(settlement agreement indicating that Petitioner's Medicare enrollment had been revoked from October 24, 2013 through October 23, 2014).

The Medicare enrollment application specifically asks a supplier whether it has been subject to a final adverse action. CMS Ex. 2 at 14 ("Has your organization, under any current or former name or business entity, ever had any of the final adverse actions listed on page 13 of the application imposed against it?"); *see also* CMS Ex. 2 at 13 (Form CMS-855B listing "[a]ny Medicare revocation of any Medicare billing number" as a final adverse action that must be reported in Section 3 of the application).

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[5] My findings of fact and conclusions of law are set forth in italics and bold font.

Petitioner has been the subject of a final adverse legal action for Medicare enrollment purposes, and it would be required to report that information on a Medicare enrollment application.

2. Petitioner submitted false enrollment information reporting that it was not the subject of a final adverse legal action and certified that this information was correct.

Petitioner submitted an enrollment application through PECOS in which it responded "No" in response to a question asking if it had been subject to a final adverse legal action. CMS Ex. 1 at 3. Petitioner's chief financial officer and authorized official electronically signed and certified that she had provided correct enrollment information. CMS Ex. 1 at 3, 7. Because Petitioner had previously been the subject of a final adverse action, it provided false enrollment information when it informed CMS that it had not been the subject of a final adverse action.

3. CMS and CGS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) because Petitioner falsely certified on an enrollment application that it had not been the subject of a final adverse legal action.

Petitioner retained the services of Bluegrass to handle the credentialing process with CMS. P. Br. at 5. Petitioner has argued that Bluegrass "negligently" failed to report that Petitioner had previously been the subject of a final adverse action. CMS Ex. 4 at 4 ("This arose only because Bluegrass negligently failed to accurately complete the Final Adverse Action section of the Application and failed to provide any instructions to [Petitioner]."); RFH at 4 (stating that "Bluegrass **negligently** failed to disclose the 2013 revocation on the Form 855B," and reporting that Petitioner "has instituted a legal action against Bluegrass arising from its failure to properly complete the Form 855B.") (emphasis in original); P. Br. at 4 (stating that "the undisputed evidence demonstrates that this inaccurate form was submitted as a result of a negligent shortcoming of [Petitioner's] agent"). Petitioner further argues that it "had every right to believe that its chosen expert, Bluegrass, would do things correctly . . . ." P. Br. at 4.

Assuming, for the limited purpose of this discussion, that Petitioner's credentialing company did not correctly report Petitioner's previous final adverse legal action on the enrollment application, such does not absolve Petitioner of the responsibility to report the final adverse legal action.[6] A supplier is bound by any false or misleading information

[6] As I previously discussed, Petitioner argues that it "disclosed to Bluegrass that [it] had a final adverse legal action" and that "Bluegrass needed that information to accurately complete section 3 of the 855 form" (P. Br. at 2). According to a questionnaire Petitioner

that a third party lists on its enrollment application, and false or misleading information may ultimately be submitted to the Medicare administrative contractor if a supplier does not carefully review all sections of an enrollment application. By signing a certification statement attesting to the accuracy of the content of an application, the supplier adopts any false or misleading statements in the application. There is simply no provision under law that absolves a supplier when its authorized official signs an incorrect enrollment application, regardless of who prepares the application for that person's signature. Thus, even if I were to accept Petitioner's unsupported claim that Bluegrass somehow erred in preparing its enrollment application, which I do not find, I also recognize that Petitioner signed the certification statement and thereby adopted any false or misleading information contained in the application.

A supplier that "certifie[s] as 'true' misleading or false information . . ." may be subject to revocation of its Medicare enrollment and billing privileges. 42 C.F.R. § 424.535(a)(4). "[S]ection 424.535(a)(4) does not require proof that [a supplier] subjectively intended to provide false information, only proof that [it] *in fact provided* misleading or false information that [it] certified as true." *Mark Koch, D.O.*, DAB No. 2610 at 4 (2014) (emphasis in original). Further, and based on a situation similar to the one presented here involving the revocation of billing privileges pursuant to section 424.535(a)(4), the Departmental Appeals Board (DAB) explained that "even if [a supplier] did not subjectively intend to mislead the Medicare program on the [enrollment] application, he was not without fault." *Id.* at 4-5. The DAB continued by stating: "Petitioner admits that, contrary to his signed certification, he did not read the complete application before signing and submitting it to Medicare. That omission was certainly negligent and exhibited indifference to Medicare requirements." *Id.* at 5 (citation omitted). In expanding on its analysis in the *Koch* decision, the Board later explained, in a nearly identical situation involving a revocation pursuant to section 424.535(a)(4), the following:

> Petitioner, like Dr. Koch, in fact provided misleading or false information that she certified as true. Moreover, even accepting that Petitioner did not intend to mislead the Medicare program, Petitioner admitted that she did

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appended its request for hearing, Petitioner reported to Bluegrass, in response to a question involving *various* health care programs and plans, that it had been "revoked" and "reinstated," without any further detail. Section 3 of the enrollment application requires an applicant to provide "each final adverse action, when it occurred, the Federal or State agency or the court/administrative body that that imposed the action, and the resolution, if any, along with "a copy of the final adverse action documentation and resolution." *See* CMS Ex. 2. Petitioner has not demonstrated that it provided Bluegrass sufficient information to put it on notice that its *Medicare* enrollment had been revoked, nor has is demonstrated that it provided the "detailed explanation" that had been requested by Bluegrass.

> not read at least one of the applications inasmuch as she asserted that she was not given an opportunity to review the application form itself. By signing the certification statements in both application forms (and she does not dispute that the signatures are hers), she attested to the truth, accuracy and completeness of their content, as is.
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> As the ALJ correctly noted, once CMS determined that Petitioner submitted Medicare enrollment applications that contained false or misleading statements that Petitioner certified as "true," CMS had a legal basis for revocation.

Sandra E. Johnson, CRNA, DAB No. 2708 at 15 (2016). Petitioner reported false information, and CMS had a legitimate basis to revoke its Medicare enrollment pursuant to section 424.535(a)(4).

Petitioner argues in its brief that revocation is inappropriate because CMS has not presented evidence of "deliberate intent to mislead" and that section 424.535(a)(4) "is void and unenforceable because requirements of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq*., were not followed." P. Br. at 5. While I need not address the merits of this argument, I reiterate my earlier observation that the text of section 424.535(a)(4), as proposed in 2003, is substantively identical to the regulation currently in effect. Further, the DAB has held, on more than one occasion, that CMS need not establish that a supplier had an "intent" to furnish false or misleading information. *See Mark Koch, D.O.*, DAB No. 2610 at 4; *Sandra E. Johnson, CRNA*, DAB No. 2708 at 15. Neither CMS nor I can ignore statutory and regulatory authority. I am bound by the law, and I cannot create a new policy that is inconsistent with the law. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009) ("An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground."); *Russell L. Reitz, M.D.*, DAB No. 2748 at 8 (2016) ("The ALJ and the Board are bound by the Secretary's regulations" and "Petitioner is free to make his . . . argument to a court, but we may not invalidate or refuse to apply a regulation."). I must apply the Medicare laws as they currently exist, and even if I were so inclined, I have no authority to invalidate a regulation or refuse to ensure adherence with a regulation. Therefore, revocation is appropriate pursuant to section 424.535(a)(4).[7]

[7] Petitioner does not raise any dispute regarding the effective date of its revocation or the three-year length of the re-enrollment bar, and it is unnecessary to further address these issues.

V. Conclusion

For the reasons explained above, I affirm the revocation of Petitioner's Medicare enrollment and billing privileges.

/s/
Leslie C. Rogall
Administrative Law Judge