Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Mr. Neb, LLC
Docket No. A-17-36
Decision No. 2806
July 21, 2017

FINAL DECISION ON REVIEW OF ADMINISTRATIVE LAW JUDGE DECISION

Mr. Neb, LLC (Petitioner) appeals a November 30, 2016 decision by an administrative law judge (ALJ), *Mr. Neb, LLC*, DAB CR4740 (ALJ Decision). The ALJ sustained on summary judgment a determination by the Centers for Medicare & Medicaid Services (CMS) to revoke Petitioner's Medicare enrollment and billing privileges, effective January 2, 2016, based on Petitioner's noncompliance with the durable medical equipment (DME) supplier standards at 42 C.F.R. §§ 424.57(c)(2) (Supplier Standard 2) and (c)(17) (Supplier Standard 17). The ALJ concluded that the revocation was authorized by 42 C.F.R. §§ 420.206(c)(2), 424.57(e)(1) and 424.535(a)(1) and was effective January 2, 2016.[1] We affirm the ALJ.

Legal Background

A provider or supplier of Medicare services must be enrolled in the Medicare program in order to receive payment for items and services covered by Medicare. 42 C.F.R. § 424.505. A supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) is "an entity or individual . . . which sells or rents Part B covered items to Medicare beneficiaries . . . ." 42 C.F.R. § 424.57(a). A DMEPOS supplier must comply with the conditions for Medicare payment in Part 424 of 42 C.F.R., and with the "[s]pecial payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges" in section 424.57, including the "supplier standards" in 42 C.F.R. § 424.57(b) and (c). CMS "revokes a supplier's billing privileges if it is found not to meet the standards in paragraphs (b) and (c)" of section 424.57. 42 C.F.R. § 424.57(e)(1); *see also 1866ICPayday.com, L.L.C.*, DAB No. 2289, at 13 (2009) ("failure to comply with even one supplier standard is a sufficient basis for

[1] Although Petitioner challenges the authority for the revocation, Petitioner does not challenge the January 2, 2016 effective date determined by CMS and upheld by the ALJ, and that date is correct. *See* 42 C.F.R. § 424.57(e)(1) (the effective date of a revocation based on noncompliance with the supplier standards is 30 days after CMS issues the notice of revocation); *Neb Group of Arizona*, DAB No. 2573, at 7-8 (2014).

revoking a supplier's billing privileges"). A revocation is effective 30 days after CMS sends notice of the revocation, except where section 424.57 provides otherwise. 42 C.F.R. § 424.57(e)(1). Revocation also results in termination of the supplier's Medicare agreement, and the supplier is barred from re-enrolling in Medicare from one to three years, "depending on the severity of the basis for revocation." 42 C.F.R. § 424.535(c)(1).

DMEPOS suppliers are also subject to the disclosure provisions of 42 C.F.R. § 420.206 which require a part B supplier (among other entities) to disclose information about any individuals having an ownership, financial or control interest in the supplier, 42 C.F.R. § 420.206(a), and to "report . . . within 35 days, on its own initiative, any changes in the information previously supplied[,]" 42 C.F.R. § 420.206(b)(3). If a part B supplier fails to comply with these requirements, CMS "revokes the [supplier's] billing number . . . ." 42 C.F.R. § 420.206(c)(2).

A supplier whose enrollment and billing privileges are revoked may request reconsideration of the revocation by CMS, a hearing before an ALJ to challenge an adverse reconsidered determination, and Board review of an unfavorable ALJ decision. 42 C.F.R. §§ 424.545, 498.5(1), 498.22, 498.40, 498.80. In enrollment appeals by Medicare suppliers and providers, the Board may not admit evidence into the record in addition to the evidence introduced before the ALJ. 42 C.F.R. § 498.86(a).

Case Background

The Revocation

In a letter dated December 3, 2015, CMS contractor Palmetto GBA National Supplier Clearinghouse (NSC), notified Petitioner that it was revoking Petitioner's Medicare enrollment and billing privileges for noncompliance with DMEPOS Supplier Standards 2, 10, 17 and 21; that the revocation was effective January 2, 2016; and, that Petitioner could not apply to reenroll in the Medicare program for one year.[2] ALJ Decision at 1-2. The letter cited the following legal authorities for the revocation action and the effective date: 42 C.F.R. §§ 405.800, 424.57(e), 424.535(a)(1), and 424.535(g). *Id.* at 1; *see also* CMS Ex. 1, at 18-21 (December 3, 2015 notice letter). The letter also informed Petitioner that it could file a corrective action plan to the extent that section 424.535(a)(1) was one of the bases for the revocation action and could seek reconsideration by an NSC hearing officer. ALJ Decision at 11, citing CMS Ex. 1, at 19.

[2] Petitioner does not challenge the length of the reenrollment bar which, in any event, is not subject to ALJ or Board review. *Vijendra Dave, M.D.*, DAB No. 2672, at 10-11 (2016).

Petitioner filed a reconsideration request. ALJ Decision at 2, citing CMS Ex. 1, at 13-14. In a letter dated March 25, 2016, the NSC hearing officer upheld the revocation for noncompliance with Supplier Standards 2, 10, 17, and 21. *Id*., citing CMS Ex. 1, at 1-6. Petitioner then filed the hearing request that resulted in the ALJ Decision now before the Board.

The ALJ Proceeding

CMS moved for summary judgment and filed CMS Exhibits (CMS Ex.) 1-3. ALJ Decision at 2. Petitioner opposed the motion and filed a cross-motion for summary judgment, together with Petitioner Exhibits (P. Ex.) 1-4.[3] *Id*. The ALJ granted CMS's motion, finding "no genuine dispute as to any material fact pertinent to revocation under 42 C.F.R. §§ 420.206(c)(2), 424.57(e), and 424.535(a)(1) that requires a trial."[4] *Id*. at 6. The ALJ cited Petitioner's concessions that it had listed James Moore as an owner in the Medicare enrollment application it filed in September 2011 and that it did not disclose to CMS that Mr. Moore sold his ownership interest on May 13, 2013. *Id*. at 9, citing P. Br. at 2; *see also* P. Ex. 2, at 1 (Moore Declaration). Supplier Standard 2, the ALJ noted, prohibits suppliers from making false statements or misrepresentations of material fact in an application for billing privileges, requires complete and accurate information in that application, and further requires that "any change of information on the application must be reported within 30 days of the change." ALJ Decision at 9. The ALJ found that section 420.206(a) and (b)(3) "specifically required . . . that ownership be disclosed and [that] a supplier is responsible to report any change of its ownership on its own initiative without any request by CMS" and that under 420.206(c)(2) "CMS is required to terminate any provider or supplier agreement and revoke the billing number of any entity that fails to report." *Id*. The ALJ also noted that "the CMS-855S [the form for applying for billing privileges] specifically provides for reporting any change in ownership." *Id*. citing CMS Ex. 2, at 17-18. The ALJ further found that Supplier Standard 17 "specifically requires that a supplier comply with [section] 420.206, which requires disclosure of names and addresses of persons with ownership, financial, or control

[3] Petitioner also filed exhibits with its hearing request. Unless otherwise noted, our citations are to the exhibits filed with Petitioner's cross-motion for summary judgment.

[4] As previously noted, CMS's reconsideration notice also cited noncompliance with sections 424.57(c)(10) (Supplier Standard 10) and 424.57(c)(21) (Supplier Standard 21) as bases for the revocation, but the ALJ did not uphold the revocation on these grounds. The ALJ concluded that the issue of whether Petitioner failed to comply with Supplier Standard 21 could not be decided on summary judgment since there was a factual dispute on that issue. *See* ALJ Decision at 10-11. The ALJ also concluded that CMS was no longer relying on Petitioner's alleged noncompliance with Supplier Standard 10 since CMS's motion for summary judgment did not argue that the revocation should be upheld on that basis. *Id*. at 6. CMS has not appealed these ALJ conclusions; accordingly, we do not address them.

interests in [the supplier] within 35 days." *Id*. at 10, citing 42 C.F.R. § 420.206(a) and (b)(3). Petitioner's failure to timely report Mr. Moore's sale of his ownership interest in Petitioner, the ALJ concluded, was a failure to comply with this requirement for which section 420.206(c)(2) and section 424.57(e)(1) required revocation. *Id*.

The ALJ rejected Petitioner's argument that because Mr. Moore remained President and CEO of Mr. Neb, the fact that he sold his ownership interest was not "material" information within the meaning of Supplier Standard 2. *Id*. at 9-10. The ALJ found the material nature of the information reflected in the specific regulatory requirements to report the information and, in addition, found that the information met the law dictionary definition of "material" in that it could affect CMS decision making on various enrollment related issues. *Id.* at 9, citing *Black's Law Dictionary* at 998 (8th ed. 2004).

The ALJ also rejected Petitioner's argument that it was denied the opportunity to file a corrective action plan (CAP) because, Petitioner claimed, it did not receive the December 3, 2016 notice informing it of that opportunity until after the 30 calendar days for filing such a plan had elapsed. *Id*. at 11. The ALJ accepted Petitioner's delayed notice claim as true for purposes of summary judgment but found no evidence that Petitioner had requested additional time to submit a CAP but, instead, merely filed a request for reconsideration. *Id*.

The ALJ also concluded that because the initial and reconsidered revocation notices cited the legal grounds for CMS's revocation decision, he need not address the merits of Petitioner's argument that the ALJ should confine his review to CMS's reasoning stated in the revocation notices. *Id*. at 12. Finally, the ALJ concluded that to the extent Petitioner's arguments could be construed as a request for equitable relief, he had no authority to provide such relief and also had no authority to declare the statutes or regulations invalid. *Id*. at 12-13.

Standard of Review

The ALJ's grant of summary judgment is a legal issue that we address de novo. *Patrick Brueggeman, D.P.M.*, DAB No. 2725, at 6 (2016). Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Id*. "The applicable substantive law will identify which facts are material, and only disputes over facts that might affect the outcome of the case under the governing law will properly preclude the entry of summary judgment." *Southpark Meadows Nursing & Rehab. Ctr.*, DAB No. 2703, at 5 (2016) (internal quotation marks and brackets omitted).

Discussion

Petitioner argues on appeal that the revocation was improper as a matter of law because Petitioner actually complied with the reporting requirements, that is, that it was not required to report the sale of Mr. Moore's ownership interest because, Petitioner contends, the regulations require reporting of only "material" information, and the sale information was not "material." Request for Review (RR) at 5-7. Petitioner also argues that the revocation was improper because the stated basis for the revocation in CMS's revocation notice, Petitioner contends, was incorrect in that Mr. Moore remained affiliated with Petitioner in other capacities after the sale of his ownership interest. *Id*. at 7-9. Finally, Petitioner argues that the revocation was improper because Petitioner was deprived of what it calls its "regulatory right to submit a [CAP]." *Id*. at 10-12. As explained below, we reject those arguments and conclude, as did the ALJ, that CMS lawfully revoked Petitioner's Medicare enrollment and billing privileges effective January 2, 2016 for noncompliance with DMEPOS Supplier Standards 2 and 17.

A. *Petitioner was required to report Mr. Moore's sale of his ownership interest in Mr. Neb pursuant to the supplier standards at sections 424.57(c)(2) and (c)(17) of the regulation.*

Petitioner argues that it was not required to report the sale of Mr. Moore's ownership interest because, Petitioner contends, the sale information is not material "in this situation." RR at 5. The ALJ rejected this argument, concluding that the sale information was material under the common legal definition of that term. We conclude that the ALJ did not need to determine whether Petitioner's failure to report Mr. Moore's sale of his ownership interest was a failure to report "material" information because Supplier Standard 2 required Petitioner to report "*any* changes" to the information it supplied in its application for billing privileges, and Supplier Standard 17 required Petitioner to comply with the provisions requiring disclosure of ownership information found in section 420.206 of the regulations.

The plain language of Supplier Standard 2 (section 424.57(c)(2)) does not support Petitioner's argument that section 424.57(e) authorizes revocation for failure to report a change in ownership information, as required by Supplier Standard 2, only if the information not reported is material. *See* RR at 5-6. Petitioner mistakenly relies on the statement in Supplier Standard 2 prohibiting any "'false statement or misrepresentation of a *material* fact on [the DMEPOS supplier's] application for billing privileges.'" RR at 6, citing 42 C.F.R. § 424.57(c)(2) (emphasis supplied by Petitioner). Petitioner, however, does not address the fact that Supplier Standard 2 also imposes a duty to "report <u>any</u> changes in information supplied on the application within 30 days of the change," without reference to the materiality of the change or the information. *Id*. (emphasis added).

Petitioner's argument also ignores the fact that CMS's second basis for the revocation, Petitioner's noncompliance with section 424.57(c)(17) (Supplier Standard 17), contains no reference at all to materiality. Supplier Standard 17 states that a "supplier must comply with the disclosure provisions in §420.206 of this subchapter." Section 420.206, in turn, requires, without reference to materiality or any other qualification, disclosure of "the name and address of each person with an ownership or control interest . . . totaling 5 percent or more" and "report[ing] . . . within 35 days, on [the supplier's] own initiative [of] any changes in the information it previously supplied." 42 C.F.R. §§ 420.206(a)(1), 420.206(b)(3). Section 420.206(c)(2) further provides, again without reference to the materiality of the information or any other qualification, that "CMS . . . (in the case of a part B supplier) revokes the billing number of[] any disclosing entity that fails to comply with [the disclosure requirements]." Thus, contrary to what Petitioner alleges, the regulations plainly require the reporting of <u>all</u> changes in ownership interests, without regard to materiality, and plainly authorize CMS to revoke if a supplier fails to report such changes.

Petitioner asserts that the ALJ engaged in "faulty logic" by on the one hand discussing the regulatory language requiring disclosure of *any* change in ownership and, on the other, "acknowledge[ing] the materiality requirement of § 420.206, and indeed, employ[ing] *Black's Law Dictionary's* definition of that term in reaching his conclusion." RR at 6. We find no merit in this argument. Although it was not necessary for the ALJ to determine whether the failure to report Mr. Moore's sale of his ownership interest in Petitioner was a failure to report "material" information, we nonetheless agree with the ALJ's conclusion that the information was material. It was appropriate for the ALJ, in the absence of a specific definition in the regulations, to apply the "common definition of 'material' in the legal context . . . that an item is '[o]f such nature that knowledge of the item would affect a person's decision-making.'" ALJ Decision at 9, citing *Black's Law Dictionary* at 998 (8th ed. 2004). Applying that definition, the ALJ concluded that the material nature of the undisclosed sale of Mr. Moore's ownership interest is implicit in the fact that section 420.206 requires suppliers to report, on their own initiative, changes in ownership information and imposes a significant sanction for failure to report. *Id*. The ALJ added, and we agree, that the materiality of the requirement to report is evident in the fact that the application for Medicare billing privileges (the CMS-855S) "specifically provides for reporting any change in ownership." *Id*. Finally, the ALJ's conclusion that disclosure and updating of ownership information may impact decisions by CMS as to, among other things, whether or not to deny or revoke a supplier's enrollment, is clearly correct as evidenced by the fact that CMS's becoming aware of the failure to report such information resulted in the revocation at issue in this case. *Id*. at 10.

Thus, contrary to Petitioner's assertion, we find the ALJ's materiality analysis logical, albeit unnecessary. We also find Petitioner's argument that the sale of Mr. Moore's ownership interest was not material information unpersuasive. Petitioner describes the transaction in which Mr. Moore sold his ownership interest as leaving Mr. Moore with a security interest in Petitioner as well as the positions of CEO and President, and Petitioner argues that through these continuing affiliations Mr. Moore somehow remained an owner. *See* RR at 7 (arguing that Mr. Moore remained an indirect owner after the transaction). We note at the outset CMS's point, which is well-taken, that Mr. Moore's declaration, which is the only evidence in the record addressing what happened to Mr. Moore's ownership interest, does not support Petitioner's description of the transaction. CMS Response at 5. Mr. Moore expressly states that he was a "part owner of Mr. Neb, LLC" only "[u]ntil May 13, 2013" and that he "currently serves[s] as the President and CEO of [Petitioner] [and] ha[s] served continuously in this role since October 2006." P. Ex. 3, at 1. Mr. Moore does not state or claim that he retained a security interest in Petitioner or that his continuing affiliation constitutes either direct or indirect ownership.

Mr. Moore's declaration notwithstanding, the ALJ accepted for purposes of summary judgment that after the sale of his ownership interest, Mr. Moore continued to have a security interest in Petitioner and served as President and CEO. ALJ Decision at 10. The ALJ further accepted as true "that in his official capacity as President and CEO [Mr. Moore] retained some control over Petitioner . . . ." *Id.* The ALJ concluded, however, "Nothing in the language of [section 420.206(a)] supports Petitioner's assertion that converting an ownership interest to a security interest is exempt from the reporting requirement." *Id*. The ALJ also concluded, again accepting Petitioner's assertion as true for purposes of summary judgment, that "the fact that [Mr. Moore's] status changed from a five percent or greater ownership interest to a control interest or an indirect ownership interest must be reported under 42 C.F.R. § 420.206(a) and (b)." *Id*. We agree. As stated above, section 420.206(b)(3) plainly requires a supplier to report "<u>any</u> changes in the [ownership and control information required under section 420.206(a)(1) it] previously supplied." (Emphasis added.) In its enrollment application, Petitioner listed Mr. Moore as a person having an ownership interest of 5 percent or more. Mr. Moore's sale of that ownership interest was indisputably a change in the previously reported information, regardless of whether Mr. Moore retained some other interest in Petitioner that gave him some control over it, and, thus, a change that Petitioner was required to report under the regulations. Petitioner cites no law to support a contrary conclusion.

B. *CMS's multiple legal bases for the revocation are not negated by the alleged misstatement of fact in CMS's notice of its initial determination to revoke.*

Petitioner argues that the ALJ improperly "did not restrict his review . . . to the basis for revocation as stated in CMS's revocation notice," but, instead, looked to what Petitioner characterizes as "CMS['s] attempt[] to alter the basis for its revocation determination in its summary judgment briefing before the ALJ (notably acknowledging that Mr. Moore is still affiliated with Mr. Neb, but alleging that there has been a material change to his status notwithstanding)." RR at 8, citing Ex. 4, at 3.[5] The ALJ concluded he did not need to resolve the issue of whether his de novo review was restricted to reasoning set forth in the revocation notice because he "need[ed to] look no further than the grounds cited in both the initial determination and reconsideration determination to find that Petitioner failed to timely report the change in ownership." ALJ Decision at 12. We also find no need to resolve the issue regarding the scope of ALJ review because we find no merit in Petitioner's argument regarding the alleged change in position.

Petitioner does not dispute that CMS's notices, as indicated by the ALJ, set forth multiple legal grounds for the revocation or that the ALJ decision addressed all those legal grounds. Petitioner rests its allegation that CMS changed the legal basis for the revocation on an alleged misstatement of fact that appeared under the citation of noncompliance with Supplier Standard 17 in CMS's notice of its initial determination. *See* RR at 7-9. The alleged misstatement of fact is as follows: "During a site inspection conducted on September 17, 2015, it was stated that James Moore is no longer affiliated with the company; however, you did not disclose this to the NSC." P. Ex. 2 (filed with Petitioner's hearing request), at 2 (quoted in RR at 8).[6] Petitioner asserts that "[t]here is no dispute that this statement, which forms the basis of Mr. Neb's alleged violation of

[5] Petitioner cited "Ex. 4, at 3" as evidence of CMS's alleged attempt to alter its position in its summary judgment brief, but none of the three documents denominated "Exhibit 4" in Petitioner's submissions in the ALJ proceeding (two filed with its hearing request and one with its response to CMS's motion for summary judgment) is evidence of any position taken by CMS. The first "Exhibit 4" filed with Petitioner's hearing request consists of documents related to the certificate of insurance issue that is not an issue on appeal. The second "Exhibit 4" filed with Petitioner's hearing request is a copy of CMS's March 25, 2016 notice of its reconsidered determination, and the page Petitioner cites merely refers to the argument made by Petitioner in its reconsideration request that the statement about Mr. Moore's affiliation status in the initial determination notice was not correct. *See also* CMS Ex. 1, at 3 (CMS's copy of the reconsideration determination notice). The "Exhibit 4" Petitioner filed in response to CMS's motion for summary judgment is the James Moore declaration. CMS did not file a fourth exhibit.

[6] Petitioner incorrectly cited "Ex. 5" as the December 3, 2015 initial revocation determination notice containing the quoted sentence.

§ 424.57(c)(17), is factually incorrect – Mr. Moore has at all relevant times remained, and still remains, affiliated with Mr. Neb as its President and CEO."[7] RR at 8. The statement in the notice of CMS's initial determination is not "factually incorrect" to the extent that it is an accurate statement of what someone in Petitioner's offices told the surveyor, and CMS was entitled to rely on that statement. Moreover, as we discussed above, the material issue here is not whether Mr. Moore remained affiliated with Petitioner in some capacity – which both the ALJ and we have accepted as true – but the fact that the nature of his affiliation changed in a manner that was required to be reported to CMS but was not.

In addition, the alleged misstatement of fact appearing in the December 3, 2015 revocation notice under the citation for noncompliance with Supplier Standard 17 did not reappear in CMS's March 25, 2016 notice of its reconsidered determination. The latter notice merely referred to the fact that Petitioner's reconsideration request had raised the issue of the alleged incorrect statement regarding Mr. Moore's affiliation in the December 3 letter. *See* CMS Ex. 1, at 3. The notice of CMS's reconsidered determination is the material notice since the right to ALJ review is based on that notice, not the notice of CMS's initial determination to revoke. 42 C.F.R. § 498.5(l)(2). Accordingly, any misstatement of fact in the initial determination notice is not material for this reason as well as for the reason that the material fact for purposes of CMS's authority to revoke is not Mr. Moore's affiliation with Petitioner, but, rather, the failure to report the fact that he no longer held an ownership interest in Mr. Neb, LLC.

For the stated reasons, there is no basis for Petitioner's assertion (RR at 8) that CMS moved for summary judgment based on "post hoc justifications for an initially improper revocation," and that the ALJ improperly relied on that "post hoc justification[]."

C. *Petitioner was not entitled to submit a CAP prior to revocation under section 424.57(e)(1).*

Petitioner's final argument on appeal is that the revocation "should . . . be reversed because Mr. Neb was deprived of its regulatory right to submit a CAP in order to avoid revocation." RR at 10. Petitioner asserts that it was "deprived" of this asserted "right" because it did not receive the initial revocation notice "until it was faxed to [Mr. Neb] upon request on January 16, well after the deadline to submit a CAP had passed." *Id*. The ALJ accepted this fact as true for purposes of summary judgment but nonetheless held that Petitioner had not been deprived of an opportunity to take corrective action

[7] We note that although Petitioner states that Mr. Moore was Mr. Neb's President, as well as its CEO, "at all relevant times," an organizational chart Petitioner apparently submitted at the time of its enrollment identifies a "Steve Fugel" as President, not Mr. Moore. *See* CMS Ex. 2, at 68.

because "there is no evidence Petitioner requested additional time to submit the CAP based on the delayed receipt of the revocation determination." ALJ Decision at 11. The ALJ further stated, "The evidence shows Petitioner was notified it could submit a CAP and a request for reconsideration and Petitioner chose the latter . . . Petitioner cannot avoid revocation by simply asserting it did not have the chance to submit a CAP where there is no evidence it even attempted the submission." *Id*. Petitioner responds to this conclusion by stating that whether it requested an extension "is entirely irrelevant to the central issue in this case – that is, whether CMS fulfilled its obligation to notify Mr. Neb in the revocation notice of the opportunity to file a CAP . . . ." RR at 11.

We agree with the ALJ that Petitioner was not deprived of a right to file a CAP. The ALJ correctly found that the December 3, 2015 notice of revocation notified Petitioner of its opportunity to file a CAP within 30 days. *See* P. Ex. 2, at 2. Thus, the record does not support Petitioner's assertion on appeal that CMS did not "fulfill[] its obligation to notify Mr. Neb in the revocation notice of the opportunity to file a CAP . . . ." RR at 11. We also agree with the ALJ that assuming the truth of Petitioner's assertion that it did not receive that letter in time to meet the stated deadline (as the ALJ and we have done), Petitioner had an obligation to seek an extension of time, but the record, as Petitioner does not deny, shows no attempt to do so. Thus, we reject Petitioner's assertion that its failure to seek an extension is irrelevant.

But there is also a legal reason for rejecting Petitioner's argument. The notice of initial determination expressly informed Petitioner that "[i]f the revocation is for multiple reasons of which one is § 424.535(a)(1), the CAP will only be reviewed with respect to the § 424.535(a)(1) basis for revocation." P. Ex. 2, at 2. In Petitioner's case, there were multiple legal bases for the revocation, only one of which was section 424.535(a)(1). Another basis was section 424.57(e)(1), and the regulations provide no right to submit a corrective action plan to attempt to avoid revocation under that regulation. As the ALJ noted, the authority to revoke under section 424.57(e)(1) "is not dependent upon 42 C.F.R. § 424.535(a) . . . ." [8] ALJ Decision at 12. Section 420.206(c)(2), an additional authority for the revocation, also does not provide an opportunity to correct before "CMS . . . revokes the billing number of . . . any disclosing entity that fails to comply with [the change of information disclosure requirements of] paragraph (b) of this section." In sum,

[8] The ALJ also concluded that while revocation is authorized under section 424.535(a) for the reasons stated, it is required under section 424.57(e)(1) for failure to meet the supplier standards established by subsections (b) and (c) of that regulation. *See* ALJ Decision at 12. It is not necessary to address that issue here since, regardless of whether the authority in section 424.57(e)(1) is mandatory or discretionary, no right to submit a CAP appears in section 424.57(e)(1) itself or in any of the other provisions of section 424.57.

sections 424.57(e)(1) and 420.206(c)(2) provided revocation authority independent of that under section 424.535(a)(1), and neither required CMS to provide Petitioner an opportunity to correct its noncompliance prior to revoking Petitioner's Medicare enrollment and billing privileges.

Conclusion

For the reasons stated above, we affirm the ALJ Decision upholding the revocation of Petitioner's Medicare enrollment and billing privileges effective January 2, 2016.

/s/
Christopher S. Randolph

/s/
Constance B. Tobias

/s/
Sheila Ann Hegy
Presiding Board Member