Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Caremed LLC,	)	Date: February 27, 2009
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-09-98
	)	Decision No. CR1910
Centers for Medicare & Medicaid	)	
Services.	)	
	)	

DECISION

I grant summary judgment to the Centers for Medicare & Medicaid Services (CMS) sustaining revocation of the supplier number of Petitioner, Caremed LLC.

I. Background

Petitioner is a Michigan-based pharmacy which has participated in the Medicare program as a supplier of items to Medicare beneficiaries. On July 23, 2008, Petitioner was notified on behalf of CMS that its supplier number was being revoked because Petitioner had been found to be out of compliance with Medicare participation requirements governing suppliers. Petitioner requested reconsideration of this determination and on September 30, 2008 a Medicare hearing officer issued a decision affirming the revocation of Petitioner's supplier number. Then, Petitioner asked for a hearing and the case was assigned to me for a hearing and a decision.

I instructed the parties to file pre-hearing exchanges consisting of briefs and their proposed exhibits including the written direct testimony of any proposed witnesses. CMS complied with my order and, with its submission, it filed a motion for summary judgment.

Petitioner requested an extension of time for it to reply to the motion, which I granted. However, Petitioner did not file a reply or a pre-hearing exchange. Instead, on February 17, 2009, it faxed a letter to my office. For reasons which I discuss below, I conclude that this letter is not responsive to my pre-hearing order or to CMS's motion.

CMS submitted 14 proposed exhibits with its pre-hearing exchange which it designated as CMS Ex. 1 - CMS Ex. 14. Petitioner submitted no proposed exhibits. I am receiving all of CMS's exhibits into the record of this case and I cite to them in this decision as is appropriate. I note, however, that Petitioner has not disputed any of the facts that CMS alleges.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether there is a basis for CMS to revoke Petitioner's Medicare supplier enrollment number.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

> ### 1. CMS is authorized to revoke a supplier's Medicare enrollment number where the supplier has failed to satisfy any Medicare enrollment requirement.

The regulatory authority for revoking a supplier's Medicare enrollment number is set forth at 42 C.F.R. § 424.535(a)(5)(ii). That section provides that a supplier's enrollment number may be revoked where, among other things, the supplier has failed to satisfy any or all of the Medicare enrollment requirements governing suppliers.

Supplier Medicare enrollment requirements include standards which are contained at 42 C.F.R. § 424.57(c). There are 25 separate standards set forth in this regulation. Noncompliance by a supplier with any of them is noncompliance with an enrollment requirement and is, thus, a basis for CMS to revoke the supplier's Medicare enrollment number.

2. The undisputed material facts establish that Petitioner failed to satisfy Medicare enrollment requirements. Therefore, CMS is authorized to revoke Petitioner's Medicare enrollment number.

The facts in this case are undisputed. Petitioner is a pharmacy. On May 8, 2008, a site visit inspector attempted to perform a site inspection of Petitioner's premises. CMS Ex. 2. However, when the inspector arrived at the premises in Centerline, Michigan that Petitioner had listed as its business location address and the location where it stored its patients' medical records, she was advised by a person at the premises that Petitioner had moved its patient files and pharmaceutical inventory to another address in Flint, Michigan. *Id.*, at 6. In subsequent communications Petitioner averred that it had temporarily transferred its services to premises in Flint that are the site of an affiliated pharmacy. Petitioner acknowledged additionally that it had obtained a pharmacy license and Drug Enforcement Administration license for the Flint location. Moreover, it admitted that it had posted a sign on the Flint location with Petitioner's name and hours of operation. CMS Ex. 5, at 2 - 3.[1]

The undisputed facts establish that Petitioner contravened three standards governing supplier participation in Medicare as a consequence of its moving its operations from Centerline to Flint without notifying CMS or its representative of its action. These standards are at 42 C.F.R. § 424.57(c)(2), (7), (8), and (9). Standard (2) requires a supplier to report any change in information supplied on its supplier enrollment application within 30 days of the change. Petitioner contravened this requirement by not informing CMS or its representative of its move from Centerline to Flint within 30 days of the move. Standard (7) requires a supplier to maintain a physical location at an appropriate site. Petitioner violated this requirement by moving its operations, unannounced, to another site. Consequently, the site that Petitioner had listed with CMS as its center of operations was no longer functional as of May 8, 2008.

Standard (8) requires a supplier to permit CMS or its agents to conduct on-site inspections to ascertain supplier compliance. Petitioner failed to comply with this requirement because, on May 8, 2008, it was not doing business at its Centerline location. Therefore, the inspector was unable to perform an on-site inspection at the site that Petitioner listed as its business location. Standard (9) requires a supplier to maintain a primary business

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[1] In its February 17, 2009 communication to me, Petitioner averred that it had made a decision "to return all facets of . . . [its] business to the permanent address located . . . [in] Centerline, Michigan." I take this statement as an admission by Petitioner that it had moved its operations away from the Centerline address for a time and that it is now in the process of returning them to that address.

telephone listed under the name of the business locally or toll-free for beneficiaries. Petitioner was not complying with this requirement as of May 8 because its primary business telephone number was not listed with directory assistance.

An additional basis exists for revoking Petitioner's supplier enrollment. A supplier is required to remain operational in order to furnish Medicare covered items or services. 42 C.F.R. § 424.535(a)(5)(ii). The term "operational" means that a supplier has a qualified physical practice location, is open to the public for the purposes of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked, in order to furnish covered items or services. 42 C.F.R. § 424.502. But, although Petitioner had told CMS that it would be operating its business from the Centerline location, it was not in fact doing so. The Centerline location did not meet any of the criteria for an operational Medicare supplier.

The principal argument that Petitioner made at reconsideration of the determination to revoke its enrollment number was that the move to Flint was only a temporary move which did not necessitate a notification of an address change. But, in fact, there is nothing in the regulations that excuses a supplier from having to provide information concerning even a temporary relocation of its operations. Consequently, the temporary status of Petitioner's relocation – which evidently has persisted for several months – is not a justification for its failure to comply with supplier enrollment requirements.[2]

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       /s/
_____
Steven T. Kessel
Administrative Law Judge

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[2] Petitioner's February 17, 2009 communication suggests that it has only now decided to return to its Centerline location, more than nine months after the May 8, 2008 site inspection.