

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Alexander Eugene Istomin

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-236

Decision No. CR2555

Date: June 19, 2012

DECISION

Petitioner, Alexander Eugene Istomin, appeals a reconsideration decision issued on December 6, 2011. After a review of the written record in this case, I sustain the determination of the Centers for Medicare and Medicaid Services (CMS) to revoke Petitioner's Medicare enrollment and billing privileges as a nurse practitioner. I do so because Petitioner did not show that he met all Medicare enrollment requirements.

I. Background and Procedural History

Petitioner submitted an enrollment application for eligibility to submit claims to the Medicare program for covered services he provided to beneficiaries as a nurse practitioner.¹ CMS Exhibit (Ex.) 3. Petitioner listed his practice location as "1965 S. Ocean Drive, Suite #16D, Hallandale, FL, 33009-5954" and indicated that this practice location was a "private practice office setting." CMS Ex. 3, at 12.

¹ Petitioner signed his enrollment application "Alexander Istomin, M.D.," and also signs his correspondence in the same manner. CMS Ex. 3, at 21; CMS Ex. 4, at 2. Petitioner acknowledges though that he is not a U.S. licensed physician and explains that his "M.D." refers to a medical degree he earned in the Union of Soviet Socialist Republics in 1989. P. Br. at 13-14; P. Ex. 10.

Petitioner also listed two other practice locations, one in Moscow, Russia and one in St. Petersburg, Russia. CMS Ex. 3, at 13-14. Petitioner stated that he began seeing Medicare patients at all three practice locations on January 3, 2007. CMS Ex. 3, at 12-14; CMS Ex. 4, at 8. Petitioner also stated that he kept Medicare patients' medical records at two sites in Moscow and St. Petersburg, Russia. CMS Ex. 3, at 17.

On June 2, 2011, SafeGuard Services (SafeGuard), a CMS zone program integrity contractor, attempted to conduct an on-site review of the practice location listed in Petitioner's Medicare enrollment application in Hallandale, Florida. CMS Ex. 16 and CMS Ex. 3, at 12. The SafeGuard representative did not find Petitioner operational to furnish Medicare covered services at 1965 S. Ocean Drive, Suite #16D in Hallandale, Florida. CMS Ex. 16. The SafeGuard representative then attempted to hold a phone interview with Petitioner; however, Petitioner indicated he was unwilling to be interviewed by a SafeGuard representative. CMS Exs. 15 and 16. Petitioner explained that he was not satisfactorily assured of the representative's credentials. P. Br. at 7-8; CMS Ex. 15.

On October 13, 2011, First Coast Service Options, Inc. (First Coast), a Medicare contractor, notified Petitioner that his Medicare enrollment and billing privileges were revoked. CMS Ex. 1. The notice letter also advised Petitioner that CMS was establishing a re-enrollment bar from participation in the Medicare program for a period of three years. *Id.* Petitioner was notified that he could submit a Corrective Action Plan (CAP) within thirty days or request reconsideration within sixty days. *Id.* Petitioner timely requested reconsideration, and on December 6, 2011, a Medicare enrollment appeals analyst determined that CMS properly revoked Petitioner's enrollment in the Medicare program. CMS Ex. 2. The reconsideration decision provided Petitioner with appeal rights for review by an Administrative Law Judge (ALJ). *Id.* Petitioner then filed a hearing request (HR) with the Civil Remedies Division of the Departmental Appeals Board.

In accordance with my Acknowledgment and Pre-hearing Order, CMS filed a Pre-Hearing Brief (CMS Br.), accompanied by sixteen exhibits (CMS Exs. 1-16), including the written direct testimony of one proposed witness. Petitioner then filed his reply to the CMS Pre-Hearing Brief (P. Br.), accompanied by nineteen exhibits (P. Exs. 1-19). I admit all of CMS's exhibits and Petitioner's exhibits into the record without objection. Petitioner did not request to cross-examine CMS's proposed witness. Without the need for cross-examination, as explained in my Acknowledgement and Pre-hearing Order, I did not conduct a hearing and thus decide this case upon the written record.

II. Applicable Law

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.² When applying for enrollment in the Medicare program, a supplier is required to provide complete accurate and truthful responses to all information requested within each section on the enrollment application applicable to the supplier type. 42 C.F.R. § 424.510(d)(2)(i). In addition, CMS has a right to perform on-site inspections to verify the accuracy of a supplier's enrollment information and to determine their compliance with Medicare enrollment requirements. 42 C.F.R. § 424.510(d)(8); *see also* 42 C.F.R. § 424.517(a)(1).

A supplier in the Medicare program “must be operational to furnish Medicare covered items or services before being granted Medicare billing privileges.” 42 C.F.R. § 424.510(d)(6). A supplier is “operational” when he or she has a “qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked . . . to furnish these items and services.” 42 C.F.R. § 424.502.

CMS is authorized to revoke a supplier's Medicare billing privileges when the provider is determined not to be in compliance with Medicare enrollment requirements. 42 C.F.R. § 424.535(a). Federal regulations provide for revocation of a provider or supplier's Medicare billing privileges for a variety of reasons including:

(5) *On-site review.* CMS determines, upon on-site review, that the provider or supplier is no longer operational to furnish Medicare covered items or services, or is not meeting Medicare enrollment requirements under statute or regulation to supervise treatment of, or to provide Medicare covered items or services for, Medicare patients. . . .

42 C.F.R. § 424.535(a)(5).

² A “supplier” furnishes services under Medicare, and the term supplier applies to physicians and other non-physician practitioners and facilities that are not included within the definition of the phrase “provider of services.” Act § 1861(d) (42 U.S.C. § 1395x(d)). Nurse practitioners and other non-physician practitioners are considered suppliers under the relevant regulations. *See* 42 C.F.R. §§ 400.202 and 424.502.

Furthermore, 42 C.F.R. § 424.517 states that:

(a) CMS reserves the right, when deemed necessary, to perform onsite review of a provider or supplier to verify that the enrollment information submitted to CMS or its agents is accurate and to determine compliance with Medicare enrollment requirements. Site visits for enrollment purposes do not affect those site visits performed for establishing compliance with conditions of participation. Based upon the results of CMS's onsite review, the provider may be subject to denial or revocation of Medicare billing privileges as specified in § 424.530 or § 424.535 of this part.

(2) *Medicare Part B providers.* CMS determines, upon review, that the supplier meets any of the following conditions:

(i) Is unable to furnish Medicare-covered items or services.

(ii) Has failed to satisfy any or all of the Medicare enrollment requirements.

III. Analysis

A. Issue

The issue in this case is whether CMS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges as a nurse practitioner.

B. Findings of Fact and Conclusions of Law

- i. CMS legitimately revoked Petitioner's enrollment and billing privileges because Petitioner did not satisfy Medicare requirements by supplying complete and accurate information on his Medicare enrollment application.*

Applicants must provide complete accurate and truthful responses to all information requested within each section on their enrollment applications. 42 C.F.R. § 424.510(d)(2)(i). If a supplier does not meet a Medicare requirement such as this, CMS has a legitimate basis for revocation. 42 CFR § 424.535(a)(4) and (5)(ii).

On his enrollment application, Petitioner indicated that his Hallandale, Florida practice location was a “private practice office setting.” CMS Ex. 3, at 12. Petitioner has not provided any documentation to CMS to establish Petitioner’s Hallandale location as anything other than a private apartment or condominium, or that it was ever an office setting operational for Medicare reimbursement purposes.

Petitioner’s own evidence substantiates this. Petitioner submitted a letter from the president of the condominium association for the Hallandale, Florida address with the intention of showing that there were no visitors on June 2, 2011, the date of CMS’s onsite visit. P. Ex. 1. The condominium association president refers to the location as Petitioner’s “Apt. 16D,” not “Suite 16D” as noted on Petitioner’s enrollment application. P. Ex. 1. This suggests that the address is a residence and not a “private practice office setting.” Also, a security policy that Petitioner presents suggests that non-residents at the listed practice location would not be ordinarily expected on the premises (“[Security Officer] Supervisors: while completing your rounds in common areas, please do not hesitate to ask for id to [sic] people that you do not recognize as residents.”) P. Ex. 2, at 1. A police report Petitioner presents also references his listed practice location as Petitioner’s “apartment” containing his personal items. P. Ex. 7. And, most importantly, Petitioner simply has not come forward with any evidence, nor does he ever contest, that this location is not an office setting where he provided care for patients with any regularity.

Therefore, I find that Petitioner has failed to satisfy Medicare requirements because he inaccurately represented a physical practice location as an office setting when it was in actuality his personal apartment/condominium.

ii. CMS legitimately revoked Petitioner’s enrollment and billing privileges because Petitioner did not satisfy Medicare requirements by maintaining an operational physical practice location.

If CMS determines based on an on-site review that the supplier is no longer operational to furnish Medicare-covered items or services, or is not otherwise meeting Medicare enrollment requirements, it may revoke the supplier’s billing privileges. 42 C.F.R. § 424.535(a)(5). A supplier is “operational” when he has a “qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked . . . to furnish these items or services.” 42 C.F.R. § 424.502.

In his Medicare enrollment application, Petitioner lists three practice locations. The application states: “Complete this section for each of your practice locations where you render services to Medicare beneficiaries” CMS Ex. 3, at 11. Petitioner listed one practice location address in Hallandale, Florida and two other practice locations in Russia. CMS Ex. 3, at 11- 14. Despite this, Petitioner claims that he does not intend to submit Medicare claims for any services he provides abroad.³ P. Br. at 12. Therefore, Petitioner’s Florida address, his only U.S. practice location listed, is critical in determining whether Petitioner has a qualified physical practice location for Medicare reimbursement purposes.

CMS attempted to conduct an on-site review of Petitioner’s practice location in Hallandale, Florida to verify Petitioner’s compliance with Medicare enrollment requirements on June 2, 2011. CMS Ex. 16 and CMS Ex. 3, at 12. The CMS contractor reported that the address listed in Petitioner’s Medicare enrollment application as a practice location was a private condominium residence and that Petitioner was in New York. CMS Ex. 16. Petitioner does not dispute CMS’s contention that he was in New York. In fact, Petitioner concedes that he was not operational at this location, as he admits he has not provided services as a nurse practitioner in Florida since 2008. P. Br. at 10. However, Petitioner infers, without providing supporting evidence, that he may have provided gratuitous emergency services under provisions of the “Florida Good Samaritan Law” in the past. P. Br. at 10. Petitioner also merely explains, in support of information he provided on his enrollment application, that he provided services to a Medicare patient in Florida on January 3, 2007, the same date he also provided services to “two of his Medicare patients via telecommunications in his offices in Russia.” P. Br. at 11.

Otherwise Petitioner makes no further reference to patient care in Florida. Petitioner contends that his inability to provide medical services in Florida is due to CMS and its contractors hindering Petitioner’s efforts to enroll in the Medicare program. P. Br. at 10. However, Petitioner points to no authority requiring Medicare enrollment as a prerequisite to practicing as a nurse practitioner in Florida.

Petitioner also contests that CMS attempted to conduct an onsite visit on June 2, 2011 because the CMS inspector would have been required to sign a visitor log, and the visitor log did not show Petitioner had any visitors that day. *See* P. Exs.1 and 2. However, I have no reason to doubt the CMS contractor’s sworn statement and unchallenged direct testimony that she went to the listed address and found a private

³ Nonetheless, Petitioner states that he stores his patients’ medical records in his two main offices in Moscow and St. Petersburg, Russia because storing the medical records of Medicare patients in Russia “represents [a] modern cost effective business model. . . .” P. Br. at 13.

condominium. CMS Ex. 16. This is because, again, Petitioner's own evidence corroborates that his alleged practice location is a private condominium. *See* P. Ex. 1 (a condominium association president's statement); P. Ex. 2 (a security policy requiring security personnel to identify people who appear to be non-residents in common areas); P. Ex 7 (a Hallandale police report which repeatedly describes the location as Petitioner's apartment and on which Petitioner reported to the police that "none of his personal items had been stolen").

Even if I were to assume the CMS inspector did not physically go to the address, which I do not, the fact that a listed practice location of Petitioner is actually a private residential condominium is enough to persuade me that the location was not operational, especially when considered in conjunction with Petitioner's own admission that he has not been providing medical services in Florida since 2008. P. Br. at 10.

IV. Conclusion

I must sustain CMS's revocation determination if a legitimate basis exists and where the facts establish noncompliance with any or all of the Medicare enrollment requirements. 42 C.F.R. § 424.517(a)(2)(ii). Although CMS and Petitioner have argued additional reasons for Petitioner's enrollment revocation, it is unnecessary for me to address these reasons in light of my findings above. I find the CMS decision to revoke Petitioner's Medicare enrollment and billing privileges as a nurse practitioner was clearly justified considering CMS's unrefuted showing that Petitioner was not operational, and he did not provide complete and accurate information on his Medicare enrollment application.

/s/
Joseph Grow
Administrative Law Judge