

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

All American Healthcare, Inc.
(NPI: 1306905179),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1651

Decision No. CR4177

Date: August 31, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS) revoked the Medicare billing privileges of All American Healthcare, Inc. (All American) because CMS concluded that All American was not operational. All American requested a hearing to dispute the revocation. For the reasons stated below, I affirm CMS's revocation of billing privileges.

I. Background

All American was an enrolled provider in the Medicare program. On September 23, 2014, a CMS administrative contractor, Palmetto GBA (Palmetto), informed All American that its Medicare billing privileges were being revoked retroactively to July 2, 2014. CMS Exhibit (Ex.) 3. Palmetto stated the following:

CMS has determined, upon on-site review, that All American Healthcare, Inc. is no longer operational to furnish Medicare covered items or services and 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. A site visit was conducted at 9894 Bissonnet Suite 300 Houston, TX 77036 on July 2, 2014. It was found that All American Healthcare, Inc. is no longer operational from that location.

CMS Ex. 3 at 1.

All American requested reconsideration of the revocation on October 31, 2014. All American admitted that it had vacated the 9894 Bissonnet location on June 30, 2014, and moved to 12630 Lima Drive, Houston, Texas 77099. All American asserted that it informed Palmetto GBA of this change in address by fax, but recognized that this was not the proper way to notify Palmetto of this change. CMS Ex. 10. With its request for reconsideration, All American submitted CMS-855A and CMS-588 forms that it completed. CMS Exs. 8-10.

On January 28, 2015, CMS's Center for Program Integrity issued a reconsidered determination that stated, in relevant part:

All of the documentation in the file for this case has been reviewed and the decision has been made in accordance with Medicare guidelines. Specifically, the provider claimed to have relocated practice location in June 30, 2014 at 12630 Lima Drive Houston TX 77099. The submitted copies of CMS 855A and CMS 588 dated October 31, 2014 are untimely. Furthermore, Palmetto confirms that a fax was not received regarding an address change. The lack of evidence do [sic] not correct the deficient compliance outlined in 42 CFR§ 424.516(e). Therefore, the reconsideration is denied.

CMS Ex. 2 at 2.

On March 16, 2015, All American requested a hearing to dispute the revocation of its Medicare billing privileges. In response to my Acknowledgement and Pre-hearing Order (Order), CMS filed a brief and 12 exhibits, and All American filed a brief.

II. Decision on the Record

All American did not object to CMS's proposed exhibits. Therefore, I admit CMS Exhibits 1 through 12 into the record.

CMS submitted the written direct testimony for one witness (CMS Ex. 12). Order ¶ 8; Civil Remedies Division Procedures (CRDP) § 19(b). All American did not submit

written direct testimony for any witnesses and did not request to cross-examine CMS's witness. Order ¶ 9; CRDP § 16(b). Therefore, I issue this decision based on the written record. Order ¶¶ 10-11; CRDP § 16(b), (d).

III. Issue

Whether CMS has a legitimate basis to revoke All American's Medicare billing privileges because All American was not operational at the practice location on file with CMS when an inspector attempted to conduct a site visit.

IV. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 405.803(a), 424.545(a)(1), 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

V. Findings of Fact, Conclusions of Law, and Analysis¹

To participate in the Medicare program as a provider, a provider must complete a CMS-855A enrollment application, which requires disclosure of the provider's address. *See* 42 C.F.R. § 424.510(a). Once enrolled, a provider must report, within 90 days, any changes in its enrollment information, including its address. 42 C.F.R. § 424.516(e)(2). CMS may perform periodic revalidations and site visits to verify the provider's enrollment information, the provider's compliance with Medicare enrollment requirements, and that the provider is operational. 42 C.F.R. §§ 424.510(d)(8), 424.515(c), 424.517(a). If CMS determines that a provider is not operational, then CMS may revoke the provider's Medicare billing privileges retroactive to the date that CMS determined that the provider was not operational. 42 C.F.R. §§ 405.800(b)(2); 424.535(a)(5)(i), (g).

1. ***A Palmetto inspector attempted to conduct a site visit on July 2, 2014, at the address on file for All American (9894 Bissonnet, Suite 300, Houston, Texas); however, the location was vacant and no staff was present to allow the inspector to enter the office.***

When All American was initially enrolled in the Medicare program, its address was 12630 Lima Drive, Houston, Texas. CMS Ex. 10. However, All American filed a completed CMS-855A and informed CMS that, on February 17, 2014, All American relocated to 9894 Bissonnet, Suite 300, Houston, Texas. CMS Ex. 11. For financial reasons, All American vacated the 9894 Bissonnet office on June 30, 2014, and moved back to the 12630 Lima Drive location on July 1, 2014. CMS Ex. 8 at 5; CMS Ex. 10.

¹ My numbered findings of fact and conclusions of law appear in bold and italics.

On July 2, 2014, at approximately 1:30 p.m., an inspector with Medicare contractor MSM Security Services attempted to conduct an unannounced site inspection of All American's office at the 9894 Bissonnet address. CMS Ex. 4 at 1; CMS Ex. 12 at 1-2. The inspector testified that "[t]his address [for All American] was given to me via MSM Security's on-line case portal." CMS Ex. 12 at 2. The inspector further testified that when he arrived at the 9894 Bissonnet location, there was no signage indicating that All American operated from that location. CMS Ex. 12 at 2. The inspector noted in his report that All American: was not open for business; did not have staff present; did not have customer activity; did not have inventory present; and did not appear to be operational. CMS Ex. 4 at 1; *see also* CMS Ex. 12 at 2. The inspector also took photographs documenting his attempted site visit. CMS Ex. 12 at 2, 4-10.

2. CMS had a legitimate basis to revoke All American's Medicare billing privileges because All American was not operational under 42 C.F.R. § 424.535(a)(5), at the location on file with CMS.

All American admits that it vacated the 9894 Bissonnet location by June 30, 2014, two days before the attempted site visit by a CMS contractor. CMS Ex. 10. All American asserts that it completed a CMS-855A application form to change its address when it moved and that it faxed notice of the change of address to Palmetto. Request for Hearing; CMS Ex. 10. Therefore, it appears that All American is arguing that on July 2, 2014, it was operational at 12630 Lima Drive and that it had provided notice of its change of address.

A provider is "operational" when it:

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 (as applicable based on the type of facility or organization, provider or supplier specialty, or the services or items being rendered) to furnish these items or services.

42 C.F.R. § 424.502. CMS may revoke a currently enrolled provider's Medicare billing privileges in the following circumstance.

Upon on-site review, CMS determines that-

- (i) A Medicare Part A provider is no longer operational to furnish Medicare covered items or services, or the

provider fails to satisfy any of the Medicare enrollment requirements.

42 C.F.R. § 424.535(a)(5)(i).

Although All American may have been open at the 12630 Lima Drive location on July 2, 2014, the regulatory definition of the term “operational” refers to the “qualified physical practice location” of a provider. 42 C.F.R. § 424.502. Significantly, the enrollment application requests the address of a provider’s practice location (*see* CMS Ex. 11 at 12) and a provider must be able to provide documentation of its “practice location” with its enrollment application. 42 C.F.R. § 424.510(d)(2)(ii). CMS may perform on-site inspections to verify that the enrollment information submitted by a provider is accurate and to determine compliance with Medicare requirements. 42 C.F.R. § 424.517(a). This means that CMS will inspect the “qualified physical practice location” that has been provided by the supplier and is currently on file with CMS. *See, e.g., JIB Enterprises, LLC*, DAB CR3010, at 9 (2013). Therefore,

when CMS or our contractor determines that a provider . . . is no longer operating at the practice location provided to Medicare on a paper or electronic Medicare enrollment application that the revocation should be effective with the date that CMS or our contractor determines that the provider or supplier is no longer operating at the practice location.

73 Fed. Reg. 69,725, 69,865 (Nov. 18, 2008).

In the present matter, CMS has provided undisputed evidence that All American was not operational at the 9894 Bissonnet location, which was the address All American had on file with CMS at the time of the July 2, 2014 attempted site visit. Therefore, I conclude that CMS had a legal basis to revoke All American’s billing privileges under 42 C.F.R. § 424.535(a)(5)(i).

3. All American did not report to CMS its change of address from 9894 Bissonnet, Houston, Texas, to 12630 Lima Drive, Houston, Texas, within 90 days of July 1, 2014, the date Petitioner asserts it changed locations.

Although All American does not dispute that its location at 9894 Bissonnet was vacant on July 2, 2014, All American asserts that it contemporaneously reported the change of address to CMS by fax when it moved to the 12630 Lima Drive location on July 1, 2014.

However, All American has failed to provide any evidence to support this contention, such as a fax confirmation sheet, testimony from the employee who faxed the change of address information, or a copy of the CMS-855A that was allegedly faxed. Further,

Palmetto has denied receipt of a fax from All American concerning a change in its location. CMS Ex. 2 at 2. It is also unclear why All American failed to inform CMS of its most recent move when it properly filed a completed CMS-855A concerning its move to the 9894 Bissonnet location in February 2014, a mere four and a half months earlier. CMS Ex. 11. Instead, the only CMS-855A form All American submitted concerning the July 1, 2014 change of address was dated October 31, 2014 (CMS Ex. 8 at 7), which is well after the 90-day timeframe in which All American was required to report its change of address. *See* 42 C.F.R. § 424.516(e)(2). Although All American provided copies of documents timely informing other government agencies of its move (CMS Exs. 5-7), these documents do not prove that All American timely notified Palmetto of the change of address. Finally, All American admitted in its reconsideration request that it did not report the change of address correctly. CMS Ex. 10. Therefore, I conclude that All American did not timely notify Palmetto of its change of address.

VI. Conclusion

I affirm CMS's revocation of All American's Medicare billing privileges.

/s/

Scott Anderson
Administrative Law Judge