

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Potters House Family Clinic, LLC  
(PTAN: 263227; NPI: 1326391947),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-227

Decision No. CR4626

Date: June 3, 2016

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, revoked the Medicare enrollment and billing privileges of Potters House Family Clinic, LLC (Potters House or Petitioner) because Potters House was not operational under 42 C.F.R. § 424.535(a)(5), and did not timely report a change in practice location under 42 C.F.R. § 424.535(a)(9). Potters House requested a hearing to dispute the revocation. For the reasons stated below, I conclude that Petitioner is not operational and affirm CMS's revocation of Medicare billing privileges retroactive to May 11, 2015.

**I. Background**

Potters House was enrolled in the Medicare program as a clinic/group practice. CMS Exhibit (Ex.) 2 at 1; CMS Ex. 9 at 10. In May 2015, a fraud investigator with a CMS administrative contractor unsuccessfully attempted a site visit of Potters House's office. CMS Ex. 4 at 1. Potters House's owner, nurse practitioner Immaculata Inyang, spoke to the fraud investigator on May 21, 2015, and then provided written confirmation of their conversation on May 22, 2015. Inyang Affidavit at 2. In her May 22, 2015 letter, Ms. Inyang stated the following:

In response to our conversation of Thursday May 21, 2015, I am declaring that I am no longer operating Potter's House Family Clinic. It has been inactive since December of 2013, but not officially closed because of financial reasons.

The last time I saw a patient was during that month . . . it is difficult to know the exact date in the month of December 2013 on which a patient was last seen.

CMS Ex. 3.

In a June 29, 2015 initial determination, a CMS administrative contractor revoked Potters House's Medicare enrollment and billing privileges. CMS Ex. 4. The initial determination provided two reasons for revocation. The first was as follows:

**42 CFR §424.535(a)(5) On-site Review**

Potters House Family Clinic, LLC is no longer operational to furnish Medicare covered items or services. On Monday, May 11, 2015, there was a site verification performed at 3917 Leeds Court, Garland TX 75043-3271. This is the practice location for the provider listed in PECOS. A sign was present at the street in front of the building, and the name of the provider was not observed. There was no signage on the door, to indicate this was the office of Potters House Family Clinic. The provider[']s name was also not observed inside the building on the sign outside the office. The address of 3917 Leeds Court, Garland, TX 75043-3271 is a residential address, and no beneficiaries were being seen at this address.

On May 12, 2015, a Provider Appears Non-Operational letter was sent to Potters House Family Clinic (3917 Leeds Court, Garland, TX 75043-3271).

...

On May 22, 2015, a signed attestation was received from Immaculata Inyang, verifying Potters House Family Clinic is no longer operational and has been inactive since December 2013. Additionally, the last claim submitted was 2013.

CMS Ex. 4 at 1. The initial determination also indicated that Potters House violated "42 CFR 424.535(a)(9) Failure to Report." For this violation, the initial determination

reiterated all of the facts quoted above for the previous violation, and concluded that: “Potters House Family Clinic, LLC did not notify CMS of this change in practice location as required under 42 C.F.R. §424.516.” CMS Ex. 4 at 2.

The initial determination specified that the revocation was effective May 11, 2015, the date on which CMS determined Petitioner was not operational, and that Petitioner was barred from reenrollment in the Medicare program for two years. CMS Ex. 4 at 1-2.

On Petitioner’s behalf, Ms. Inyang requested reconsideration of the revocation. CMS Exs. 5, 6. Ms. Inyang stated that despite Potters Home’s name, there was no clinic at its address because Ms. Inyang exclusively provides house call services under the supervision of a physician. CMS Ex. 5 at 1. Ms. Inyang disputed CMS’s interpretation of her May 22, 2015 letter:

[Potters House] did provide a statement to CMS that it was no longer operational; however, it was trying to convey that there was a temporary cessation where it was not operational as providing house call services. It was not intended to demonstrate that the provider numbers would not continue to be used. The appropriate documentation evidencing such had been filed with CMS as demonstrated by the evidence[] included herein. In addition, the Notice states that no services have been billed through [Petitioner] since 2013. However, it had in fact submitted claims from January 1, 2014 through June 20, 2014. Please see the attached documentation demonstrating this to be the case.

The [initial determination] also states that [Petitioner] failed to report its correct address pursuant to 42 CFR §424.535(a)(9). However, that is not correct. . . . Again, it appears that [Petitioner’s] name may have caused the confusion by creating a false impression that [Petitioner] was providing services as a clinic at [Petitioner’s] address. Rather, it was providing medical services through its providers under the supervision of its corroborating physician.

CMS Ex. 5 at 2.

On November 9, 2015, a hearing officer employed by the CMS administrative contractor issued an unfavorable reconsidered determination. CMS Ex. 7.

On January 6, 2016, Petitioner requested a hearing. CMS Ex. 8. The case was originally assigned to Administrative Law Judge Joseph Grow. Judge Grow issued an Acknowledgment and Pre-hearing Order (Order) on January 13, 2016. In response to the Order, CMS filed a brief (CMS Br.) and nine exhibits (CMS Exs. 1-9). Petitioner filed a brief (P. Br.), nine marked exhibits (P. Exs. 1-9), and an affidavit from Ms. Inyang, which was not marked as an exhibit.

On March 31, 2016, the Director of the Civil Remedies Division notified the parties that Judge Grow transferred to another component in the Department of Health and Human Services and that she had transferred this case to me.

## **II. Decision on the Record**

CMS and Petitioner submitted identical proposed exhibits. I admit into the record CMS Exs. 1-9, but exclude P. Exs. 1-9 as duplicative.<sup>1</sup> Civil Remedies Division Procedures (CRDP) § 14(a). Although Petitioner failed to properly mark Ms. Inyang's affidavit (Order ¶¶ 4(c)(iv), 5; CRDP § 19(b)), I will admit it into the record.

Judge Grow directed the parties to submit written direct testimony for each proposed witness. Order ¶ 8. CMS did not submit any written direct testimony. Petitioner submitted Ms. Inyang's affidavit; however, CMS did not request to cross-examine Ms. Inyang. The Order stated that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶ 10; CRDP § 16(b). Because CMS did not request to cross-examine Petitioner's witness, I decide this case based on the written record. Order ¶¶ 10-11; CRDP § 19(b), (d).

## **III. Issue**

Whether CMS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges.

## **IV. Jurisdiction**

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

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<sup>1</sup> Without explanation, CMS counsel uploaded into the DAB E-file two sets of exhibits marked as CMS Exs. 1-9, which are not identical. I admit the second set of uploads (DAB E-file #s 16-24) because the exhibit numbers of these exhibits are consistent with the exhibits cited in CMS's brief and correspond to CMS's exhibit list.

## V. Findings of Fact, Conclusions of Law, and Analysis<sup>2</sup>

The Secretary of Health and Human Services (Secretary) has the authority to create regulations that establish enrollment standards for providers and suppliers. 42 U.S.C. § 1395cc(j). The Secretary promulgated a regulation that requires providers and suppliers to be operational. 42 C.F.R. § 424.535(a)(5). To be “operational,” a provider or supplier must be “open to the public for the purpose of providing health care related services . . . .” 42 C.F.R. § 424.502. CMS or its contractors may conduct site visits of a supplier’s premises at any time to determine if a supplier is in compliance with Medicare enrollment requirements. *See* 42 C.F.R. §§ 424.510(d)(8), 424.515(c), 424.517(a).

The Secretary also promulgated regulations requiring non-physicians and non-physician practitioner organizations to report a change in practice location within 30 days of the change. 42 C.F.R. § 424.516(d)(1)(iii). A failure to do so may result in revocation of Medicare enrollment and billing privileges. 42 C.F.R. § 424.535(a)(9).

1. *Petitioner was not operational under 42 C.F.R. § 424.535(a)(5) because a fraud investigator employed by a CMS administrative contractor observed that Petitioner’s practice location was a residential home that was not open, and Petitioner’s owner expressly stated in a letter to the fraud investigator that Petitioner had not operated as a business since December 2013.*

CMS asserted in its brief that the following were undisputed facts in this case:

1. On May 11, 2015, [a CMS administrative contractor] conducted a site verification at the practice location of Petitioner’s clinic at 3917 Leeds Court, Garland, Texas, 75043-3271. CMS Ex. 4.
2. The [CMS administrative contractor] Investigator went to the address of the practice location for Petitioner’s clinic that was listed in the Medicare provider enrollment application and in the PECOS. [CMS Ex. 4.]
3. The [CMS administrative contractor] Investigator found that there was no signage on the door to indicate that this was the office of the Potters House Family Clinic. [CMS Ex. 4.]

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<sup>2</sup> My numbered findings of fact and conclusions of law are set forth below in italics and bold.

4. In addition, the [CMS administrative contractor] Investigator found that this was a residential home, and did not observe Petitioner providing services to Medicare beneficiaries at this address and location. [CMS Ex. 4.]

5. By letter dated May 12, 2015, [the CMS administrative contractor] sent to Petitioner a “Provider Appears Non-Operational” letter at the practice location address on file in its enrollment application and PECOS.

6. On May 22, 2015, [the CMS administrative contractor] received from Petitioner a signed attestation that stated that the clinic was no longer operational. CMS Ex. 3.

7. In that letter to [the CMS administrative contractor], Petitioner stated that the clinic had been inactive since December 2013, and the last claim submitted was in 2013. [CMS Ex. 3.]

CMS Br. at 4-5. Petitioner accepted these facts. P. Br. at 3. As indicated in the list of undisputed facts above, Petitioner’s owner, Ms. Inyang, clearly admitted in her May 22, 2015 letter that Petitioner had not been operational since December 2013. CMS Ex. 3.

Subsequent to the May 22, 2015 letter, Ms. Inyang has attempted to re-characterize the admission she made in her letter. In the reconsideration request, Ms. Inyang stated that CMS misinterpreted her letter and that she had stated that Petitioner was only temporarily closed. CMS Ex. 5 at 2. In her testimony, Ms. Inyang falsely states that her May 22, 2015 letter indicates that Petitioner was only temporarily closed. Inyang Affidavit at 2. Petitioner asserts there was a simple miscommunication between Ms. Inyang and the CMS administrative contractor. CMS Ex. 8 at 3. However, the May 22, 2015 letter is clear “that I am no longer operating Potter’s House Family Clinic. It has been inactive since December of 2013, but not officially closed because of financial reasons.” CMS Ex. 3. While it is possible that Ms. Inyang misspoke, Petitioner does not assert that. Instead, Petitioner asserts that the letter says something it does not actually say – that Petitioner was only temporarily closed.

Petitioner has failed to provide evidence that it is in fact operational, i.e., open and staffed in order to provide health care services. *See* 42 C.F.R. § 424.502. Therefore, I conclude that Petitioner is not operational in violation of 42 C.F.R. § 424.535(a)(5).

***2. I do not need to decide whether Petitioner timely reported a change of practice location under 42 C.F.R. § 424.535(a)(9).***

The regulations require that non-physician practitioners and non-physician practitioner organizations report, within 30 days, a change in its practice location. 42 C.F.R. § 424.516(d)(1)(iii). Failure to timely report is a basis to revoke a non-physician practitioner or non-physician practitioner organization's Medicare enrollment and billing privileges. 42 C.F.R. § 424.535(a)(9). CMS argues that Petitioner failed to timely provide notice of its change in practice location.

[T]he undisputed facts support that Petitioner violated a Medicare enrollment requirement when she failed to timely report a change in practice location. Petitioner stated that her practice had been inactive since December 2013, but she did not report this change in practice location until May 22, 2015. [CMS Ex. 3]. Additionally, Petitioner appears to assert that the CMS Form 855-B that she sent to CMS on June 26, 2014, is evidence that she reported a change in practice. CMS Ex. 8 at 3; Ex. 9. However, Petitioner's submission of that CMS Form 855-B was not timely filed with CMS in violation of the Medicare enrollment requirement at 42 C.F.R. § 424.516(d).

CMS Br. at 9. For its part, Petitioner asserts that it properly notified CMS in 2014 of its change in practice location. CMS Ex. 8 at 3; *see also* P. Br. at 5-6; CMS Exs. 2, 5, 9.

Because I have concluded that Petitioner was not operational, I do not need to decide whether Petitioner also violated 42 C.F.R. § 424.535(a)(9). If CMS revokes a provider's or supplier's billing privileges, the effective date of the revocation is usually 30 days after the date on the notice of revocation. However, if CMS revokes a provider's or supplier's billing privileges because it is not operational, then the effective date of revocation is the date CMS determined that the provider or supplier was not operational. 42 C.F.R. § 424.535(g). CMS imposed a retroactive effective date of revocation in this case. CMS Ex. 4 at 1. Therefore, it was only necessary for me to decide whether to uphold the non-operational finding to affirm CMS's determination to retroactively revoke Petitioner's Medicare enrollment and billing privileges.

## **VI. Conclusion**

I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges effective May 11, 2015.

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/s/  
Scott Anderson  
Administrative Law Judge