**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Professional Management Services, LLC
(NPI: 1699731810; PTAN: 4384040001)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3829

Decision No. CR4531

Date: February 17, 2016

# DECISION

The Medicare enrollment and billing privileges of Petitioner, Professional Management Services, LLC, are revoked pursuant to 42 C.F.R. § 424.57(e)[1] effective April 25, 2015, based on noncompliance with 42 C.F.R. § 424.57(c)(7)(i)(C) and (D) (Supplier Standard 7).

## I. Procedural History and Jurisdiction

Palmetto, GBA (Palmetto), the Medicare administrative contractor operating the National Supplier Clearinghouse for the Centers for Medicare & Medicaid Services (CMS), notified Petitioner by letter dated April 10, 2015, that its Medicare supplier number was revoked. Palmetto cited as authority for the revocation 42 C.F.R. §§ 405.800, 424.57(e), 424.535(a)(5), and 424.535(g). Palmetto imposed a two-year bar to re-enrollment pursuant to 42 C.F.R. § 424.535(c). Palmetto alleged that an inspector attempted to visit Petitioner's facility on March 19 and 23, 2015, but could not gain access on either visit

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[1] The 2014 revision of the Code of Federal Regulations (C.F.R.) is cited, unless otherwise indicated.

because Petitioner's business was closed and there was no business sign or hours of operation posted. Because Petitioner was not open on either occasion that the inspector visited and there were no posted business sign or hours, Palmetto concluded that Petitioner was not operational. CMS Exhibit (Ex.) 1 at 11-13.

On April 23, 2015, Petitioner requested that Palmetto reconsider its initial determination to revoke Petitioner's Medicare enrollment and billing privileges. Petitioner explained in its request for reconsideration that the services and supplies that Petitioner provides are such that Petitioner falls within the exception to the requirement to maintain a facility open to the public. Petitioner noted that since first enrolled in Medicare as a durable medical equipment, prosthetics, and orthotic supplies (DMEPOS) supplier it has always provided its supplies (shoes and inserts) and services (fittings and delivery) in the facilities where its clients resided such as nursing homes and assisted living facilities because its clients are unable to travel to a business location. CMS Ex. 1 at 9-10.

On May 24, 2015, a Palmetto hearing officer upheld the revocation. CMS Ex. 1 at 1-5. At the beginning of the section of the reconsidered determination titled "Rationale," the hearing officer cited 42 C.F.R. § 424.57(c)(7) (Supplier Standard 7) as the legal basis for revocation and the inspector's inability to access Petitioner's facility and the absence of a business sign and posted hours of operation as the factual basis. CMS Ex. 1 at 1-2. Subsequently, and still in her "Rationale," the hearing officer stated that Petitioner's facility was not accessible to the inspector as required by 42 C.F.R. § 424.515. CMS Ex. 1 at 3-4. In the last paragraph of her "Rationale," the hearing officer cited 42 C.F.R. §§ 405.800, 424.57(e), 424.535(a)(5)(ii), and 424.535(g) and declared that Petitioner's supplier number was revoked. The hearing officer stated that the additional information provided by Petitioner does not verify compliance with Supplier Standard 7. CMS Ex. 1 at 4. The hearing officer did not specifically address whether or not Petitioner met the exception to the Supplier Standard 7 requirement for having a business facility and posted hours of operation, or whether there is such an exception. In a section of the reconsidered determination titled "Decision," the hearing officer stated that Petitioner has not shown compliance with Supplier Standard 7. The hearing officer also stated that Petitioner has not provided evidence to show compliance with the standard for which Petitioner was found noncompliant. CMS Ex. 1 at 4.

Petitioner filed a request for hearing (RFH) before an administrative law judge (ALJ) on July 16, 2015. Petitioner filed with its request for hearing a collection of documents which I treat as Petitioner's exhibit (P. Ex.) 1. Departmental Appeals Board Electronic Filing System (DAB E-File) Item # 1, 1a, and 1b. Many of the documents in P. Ex. 1, but not all, are also included in CMS Ex. 1. On August 24, 2015, the case was assigned to me and an Acknowledgement and Prehearing Order (Prehearing Order) was issued.

CMS filed its prehearing exchange and a motion for summary judgment on September 23, 2015, with CMS Exs. 1 and 2. Petitioner failed to timely file its exchange and on November 19, 2015, I ordered Petitioner to show cause for why the case should not be dismissed for abandonment or as a sanction. Petitioner responded to the order to show cause by letter dated November 25, 2015, which I treat as P. Ex. 2. On December 3, 2015, CMS waived filing a reply brief. Petitioner submitted another letter dated December 8, 2015, which I treat as P. Ex. 3. Neither party has objected to my consideration of the documents offered and CMS Exs. 1 and 2 and P. Exs. 1 through 3 are admitted as evidence.

## II. Discussion

### A. 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. Administration of the Part B program is through contractors, such as Palmetto. Act § 1842(a) (42 U.S.C. § 1395u(a)). Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.[2] Act §§ 1835(a) (42 U.S.C. § 1395n(a)), 1842(h)(1) (42 U.S.C. § 1395(u)(h)(1)). Petitioner is a DMEPOS supplier.

The Act requires the Secretary to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review in the event of denial or non-renewal. Act § 1866(j) (42 U.S.C. § 1395cc(j)). Pursuant to 42 C.F.R. § 424.505, a supplier must be enrolled in the Medicare program and be issued a billing number to have billing privileges and to be eligible to receive payment for services rendered to a Medicare eligible beneficiary. To receive direct-billing privileges, a DMEPOS supplier must meet and maintain the Medicare application certification standards set forth in 42 C.F.R. § 424.57(c). Among other requirements, a DMEPOS supplier must maintain a physical facility on an appropriate site. 42 C.F.R.

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[2] A "supplier" furnishes services under Medicare. The term supplier applies to physicians or other 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)). A "provider of services," commonly shortened to "provider," includes hospitals, critical access hospitals, skilled nursing facilities, comprehensive outpatient rehabilitation facilities, home health agencies, hospice programs, and a fund as described in sections 1814(g) and 1835(e) of the Act. Act § 1861(u) (42 U.S.C. § 1395x(u)). The distinction between providers and suppliers is important because they are treated differently under the Act for some purposes.

§ 424.57(c)(7). An appropriate site for the physical facility must meet certain criteria, including that the practice location is in a location accessible to the public, Medicare beneficiaries, and CMS and its agents, and that the practice location is accessible and staffed during posted hours of operation. 42 C.F.R. § 424.57(c)(7)(i)(B), (C). A DMEPOS supplier must provide complete and accurate information in response to questions on its application for Medicare billing privileges and must report to CMS any changes in information supplied on the application within 30 days of the change. 42 C.F.R. § 424.57(c)(2). A DMEPOS supplier must permit CMS or its agent to conduct on-site inspections to ascertain supplier compliance with the Medicare enrollment standards. 42 C.F.R. § 424.57(c)(8). Finally, a DMEPOS supplier must at all times be "operational," which means 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 . . . to furnish these items or services." 42 C.F.R. § 424.502.

The Secretary has delegated the authority to revoke enrollment and billing privileges to CMS. 42 C.F.R. § 424.535. CMS or its Medicare contractor may revoke an enrolled supplier's Medicare enrollment, billing privileges, and supplier agreement for any of the reasons listed in 42 C.F.R. § 424.535. Specifically, CMS may revoke a supplier's enrollment and billing privileges if the supplier is found not to be in compliance with the enrollment requirements. 42 C.F.R. § 424.535(a)(1). CMS may also revoke a currently enrolled supplier's Medicare enrollment and billing privileges if CMS determines, upon on-site review, that the supplier is no longer operational to furnish Medicare covered items or services, or the supplier fails to satisfy any or all of the Medicare enrollment requirements, or has failed to furnish Medicare covered items or services as required by the statute or regulations. 42 C.F.R. § 424.535(a)(5)(ii). Revocation of Medicare enrollment and billing privileges for a DMEPOS supplier is required under 42 C.F.R. § 424.57(e) if a DMEPOS supplier fails to meet the special requirements for such suppliers established by 42 C.F.R. § 424.57(b) and (c). After a supplier's Medicare enrollment and billing privileges are revoked, the supplier is barred from reenrolling in the Medicare program for one to three years. 42 C.F.R. § 424.535(c).

A supplier whose enrollment and billing privileges have been revoked may request reconsideration and review as provided by 42 C.F.R. pt. 498. A supplier submits a written request for reconsideration to CMS or its contractor. 42 C.F.R. § 498.22(a). CMS or its contractor must give notice of its reconsidered determination to the supplier, giving the reasons for its determination and specifying the conditions or requirements the supplier failed to meet, and the right to an ALJ hearing. 42 C.F.R. § 498.25. If the decision on reconsideration is unfavorable to the supplier, the supplier has the right to request a hearing by an ALJ and further review by the Departmental Appeals Board (the Board). Act § 1866(j)(8) (42 U.S.C. § 1395cc(j)(8)); 42 C.F.R. §§ 424.545, 498.3(b)(17), 498.5. A hearing on the record, also known as an oral hearing, is required under the Act.

*Crestview Parke Care Ctr. v. Thompson*, 373 F.3d 743, 748-751 (6th Cir. 2004). The supplier bears the burden to demonstrate that it meets enrollment requirements with documents and records. 42 C.F.R. § 424.545(c).

### B. Issues

Whether summary judgment is appropriate; and

Whether there was a basis for the revocation of Petitioner's billing privileges and Medicare enrollment.

### C. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold text followed by my findings of fact and analysis.

**1. Summary judgment is appropriate.**

**2. There was a basis to revoke Petitioner's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 57(e) for violation of 42 C.F.R. § 424.57(c)(7)(i)(C) and (D) (Supplier Standard 7).**

**3. The effective date of revocation is April 25, 2015, pursuant to 42 C.F.R. § 424.57(e).**

A provider or supplier denied enrollment in Medicare or whose enrollment had been revoked has a right to a hearing and judicial review pursuant to section 1866(h)(1) and (j) of the Act and 42 C.F.R. §§ 424.454(a), 498.3(b)(1), (5), (6), (8), (15), (17), 498.5. The Act requires a hearing on the record, also known as an oral hearing. Act §§ 205(b), 1866 (h)(1) and (j); *Crestview Parke Care Ctr. v. Thompson*, 373 F.3d 743, 748-51. A party may waive appearance at an oral hearing, but must do so affirmatively in writing. 42 C.F.R. § 498.66. In this case, Petitioner has not waived the right to oral hearing or otherwise consented to decision based only upon the documentary evidence or pleadings. Accordingly, disposition on the written record alone is not permissible, unless CMS' motion for summary judgment has merit.

Summary judgment is not automatic upon request. Rather, it is limited to certain specific conditions. The procedures established by 42 C.F.R. pt. 498 related to ALJ hearings applicable in this case do not include a summary judgment procedure. However, appellate panels of the Board have long recognized the availability of summary judgment in cases subject to 42 C.F.R. pt. 498, and the federal courts have recognized the Board's interpretative rule. *See, e.g.*, *Crestview*, 373 F.3d at 749-750. Furthermore, I adopted a

summary judgment procedure as a matter of judicial economy within my authority to regulate the course of proceedings and made it available to the parties in the litigation of this case by my Prehearing Order. Prehearing Order §§ II.D, II.G.

Summary judgment is appropriate when there is no genuine dispute as to any issue of material fact for adjudication or the moving party is entitled to judgment as a matter of law. In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. The party requesting summary judgment bears the burden of showing that there are no genuine issues of material fact for trial or that it is entitled to judgment as a matter of law. Generally, the non-movant may not defeat an adequately supported summary judgment motion by relying on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact, i.e., a fact that would affect the outcome of the case if proven. *Mission Hosp. Reg'l Med. Ctr.*, DAB No. 2459 at 4 (2012) (and cases cited therein); *Experts Are Us, Inc.*, DAB No. 2452 at 4 (2012) (and cases cited therein); *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300 at 3 (2010) (and cases cited therein); *see also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The standard for deciding a case on summary judgment and an ALJ's decision-making in deciding a summary judgment motion differ from resolving a case after a hearing. On summary judgment, the ALJ does not make credibility determinations, weigh the evidence, or decide which inferences to draw from the evidence, as would be done when finding facts after a hearing on the record. Rather, on summary judgment the ALJ construes the evidence in a light most favorable to the non-movant and avoids deciding which version of the facts is more likely true. *Holy Cross Vill. at Notre Dame, Inc.*, DAB No. 2291 at 5 (2009). The Board has also recognized that on summary judgment it is appropriate for the ALJ to consider whether a rational trier of fact could find that the parties' evidence would be sufficient to meet that party's evidentiary burden. *Dumas Nursing & Rehab., L.P.*, DAB No. 2347 at 5 (2010). The Secretary has not provided for the allocation of the burden of persuasion or the quantum of evidence in 42 C.F.R. pt. 498. The Board, however, has provided some persuasive analysis regarding the allocation of the burden of persuasion in cases subject to 42 C.F.R. pt. 498. *Batavia Nursing & Convalescent Ctr.*, DAB No. 1904 (2004), *aff'd, Batavia Nursing & Convalescent Ctr. v. Thompson*, 129 Fed. App'x 181 (6th Cir. 2005).

**a. Undisputed Facts**

Petitioner does not dispute the facts necessary to conclude that there is a basis for revocation based on violation of 42 C.F.R. § 424.57(c)(7)(C) and (D) (Supplier Standard 7).

On December 18, 2014, Palmetto notified Petitioner that Petitioner was required to revalidate its enrollment as a DMEPOS supplier. CMS Ex. 1 at 47-49. Petitioner completed, signed, and dated the enrollment application (CMS Form 855S) required for revalidation on January 13, 2015. CMS Ex. 1 at 38, 45. The application reflects that Petitioner supplies diabetic shoes/inserts and custom diabetic shoes/inserts. CMS Ex. 1 at 23. The application listed Petitioner's business location as 707 Old Crossing Drive, Baltimore, Maryland. The application stated Petitioner's hours of operation at its business location were 9 a.m. to 5 p.m., Monday through Friday. Petitioner did not check the block to indicate that its facility was opened by appointment only. CMS Ex. 1 at 20. The application Petitioner signed states that a "supplier must maintain a physical facility on an appropriate site and must maintain a visible sign with posted hours of operation." CMS Ex. 1 at 15. The application stated that the supplier must permit CMS or its agent to conduct an on-site inspection. The application also stated that a supplier must remain open to the public for a minimum of 30 hours per week, except for physicians, physical and occupational therapists, or suppliers working with custom orthotics and prosthetics. CMS Ex. 1 at 15.

Petitioner does not dispute that on March 19, 2015, at about 2:00 p.m. and March 23, 2015, at about 11:54 a.m., Beverly Ailiff, an inspector contracted to act on behalf of Palmetto, attempted to conduct on-site inspections of Petitioner's facility at 707 Old Crossing Drive, Pikesville, Maryland.[3] Petitioner does not dispute that Inspector Ailiff was at its business location. Petitioner does not dispute that the visits occurred during the hours of operation that Petitioner listed in its revalidation application. Petitioner does not dispute that it had no business sign with its name or posted hours of operation at the address visited by Inspector Ailiff. Petitioner does not dispute that there were no employees present or business activity at its facility at the time of the on-site visits. Petitioner does not dispute the accuracy of Inspector Ailiff's declaration. CMS Ex. 2. Petitioner does not dispute that Inspector Ailiff could not gain access to its facility to conduct a site inspection.

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[3] In its revalidation application, Petitioner lists its business address as 707 Old Crossing Drive, Baltimore, Maryland 21208. CMS Ex. 1 at 20. Investigator Aillif states in her declaration that she attempted site visits at 707 Old Crossing Drive, Pikesville, Maryland 21208. CMS Ex. 2 at 1, ¶ 2. Investigator Aillif also listed the city as Pikesville in her report dated March 23, 2015. CMS Ex. 2 at 4. There is no dispute that Investigator Aillif attempted site visits at Petitioner's business location, despite the inconsistency in the addresses.

**b. Analysis**

A single violation of a single supplier standard is an adequate basis for revocation of billing privileges and enrollment. *1866ICPayday.com*, DAB No. 2289 at 13 (2009). In this case CMS cites multiple bases for revocation that depend upon different facts. I conclude that the undisputed facts establish one of the bases cited by CMS, specifically Petitioner's failure to comply with 42 C.F.R. § 424.57(c)(7)(i)(C) and (D) (Supplier Standard 7).

The facts also establish a violation of 42 C.F.R. § 424.57(c)(8) (Supplier Standard 8), which requires that a DMEPOS supplier permit CMS or its agents to conduct on-site inspections. However, neither the initial determination nor the reconsidered determination cite 42 C.F.R. § 424.57(c)(8) as a basis for revocation. Arguably the factual assertions in the initial and reconsidered determination may have been sufficient notice that revocation was based on denial of access. However, I need not resolve whether or not notice to Petitioner was legally sufficient under 42 C.F.R. §§ 424.500(b)(1) and 498.20(a)(1), because there was adequate notice of a violation of 42 C.F.R. § 424.57(c)(7) (Supplier Standard 7) and sufficient facts to establish that violation.

CMS also argues that revocation is appropriate under 42 C.F.R. § 424.535(a)(5)(ii) on the theory that Petitioner was not operational at the times of the site visits. However, I conclude that there are genuine disputes related to whether or not Petitioner was operational and summary judgment is not appropriate as to revocation under 42 C.F.R. § 424.535(a)(5)(ii). Operational is defined by 42 C.F.R. § 424.502 to mean that a "provider or supplier 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" the items or services for the type of provider or supplier. Thus, the definition of operational at 42 C.F.R. § 424.502, requires consideration of more than simply whether the door is unlocked, the lights are on, and staff is present when the inspector shows up. CMS Ex. 1 at 8-10; P. Ex. 3. Revocation under 42 C.F.R. § 424.535(a)(5)(ii) would permit revocation earlier than revocation under 42 C.F.R. §§ 424.57(c)(7). In this case, revocation under 42 C.F.R. § 424.535(a)(5)(ii) would be effective March 23, 2015, pursuant to 42 C.F.R. § 424.535(g), rather than April 25, 2015, based on a revocation pursuant to 42 C.F.R. § 424.57(e). If CMS wishes to pursue the earlier revocation date based on revocation under 42 C.F.R. § 424.535(a)(5)(ii), CMS may file a motion within 60 days of the date of this decision requesting that I reopen this decision to permit an oral hearing for purposes of determining whether or not Petitioner was operational on March 23, 2015, when the inspector last visited Petitioner's business. 42 C.F.R. § 498.100.

The undisputed facts in this case clearly show that Petitioner violated 42 C.F.R. § 424.57(c)(7)(i)(C) and (D) (Supplier Standard 7). There is no question that Petitioner had a physical facility at 707 Old Crossing Drive, Baltimore, Maryland as required by 42 C.F.R. § 424.57(c)(7). The violation of 42 C.F.R. § 424.57(c)(7)(i)(C) occurred in this case because it is undisputed that Inspector Ailiff visited Petitioner's facility during the hours of operation listed in Petitioner's revalidation application, but Petitioner's facility was not accessible and staffed. The violation of 42 C.F.R. § 424.57(c)(7)(i)(D) occurred because it is undisputed that Petitioner had no visible sign at its facility with its name and no posted hours of operation.

Petitioner asserts that it falls within the exception to requirements for a physical facility with a sign, and posted hours of operation. RFH at 1; P. Ex. 1 at 1, 3; CMS Ex. 1 at 8-9. I accept for purposes of summary judgment that Petitioner is a supplier of custom orthotics. However, Petitioner's arguments about the applicability of the requirements of Supplier Standard 7 for a physical facility and posted hours of operation must be resolved against Petitioner as a matter of law.

The regulation requires that a DMEPOS supplier meet and certify in its application for billing privileges that it meets and will continue to meet the 30 supplier standards established by 42 C.F.R. § 424.57(c), including Supplier Standard 7 which requires that a DMEPOS supplier:

> (7) Maintains a physical facility on an appropriate site. An appropriate site must meet all of the following:
>
> (i) Must meet the following criteria:
>
> (A)(1) Except for orthotic and prosthetic personnel described in paragraph (c)(7)(i)(A)(2) of this section, maintains a practice location that is at least 200 square feet beginning—
>
> (i) September 27, 2010 for a prospective DMEPOS supplier;
>
> (ii) The first day after termination of an expiring lease for an existing DMEPOS supplier with a lease that expires on or after September 27, 2010 and before September 27, 2013; or
>
> (iii) September 27, 2013, for an existing DMEPOS supplier with a lease that expires on or after September 27, 2013.

(2) Orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice do not have to meet the practice location requirements in paragraph (c)(7)(i)(A)(1) of this section if the orthotic and prosthetic personnel are—

(i) State-licensed; or

(ii) Practicing in a State that does not offer State licensure for orthotic and prosthetic personnel.

(B) Is in a location that is accessible to the public, Medicare beneficiaries, CMS, NSC, and its agents. (The location must not be in a gated community or other area where access is restricted.)

(C) Is accessible and staffed during posted hours of operation.

(D) Maintains a permanent visible sign in plain view and posts hours of operation. If the supplier's place of business is located within a building complex, the sign must be visible at the main entrance of the building or the hours can be posted at the entrance of the supplier.

(E) Except for business records that are stored in centralized location as described in paragraph (c)(7)(ii) of this section, is in a location that contains space for storing business records (including the supplier's delivery, maintenance, and beneficiary communication records).

(F) Is in a location that contains space for retaining the necessary ordering and referring documentation specified in § 424.516(f).

(ii) May be the centralized location for all of the business records and the ordering and referring documentation of a multisite supplier.

(iii) May be a "closed door" business, such as a pharmacy or supplier providing services only to beneficiaries residing in a nursing home, that complies with all applicable Federal,

> State, and local laws and regulations. "Closed door" businesses must comply with all the requirements in this paragraph.

Petitioner clearly misread the requirements of 42 C.F.R. § 424.57(c)(7)(i)(A). I accept for purposes of summary judgment that Petitioner is a supplier of custom orthotics that meets the requirements of 42 C.F.R. § 424.57(c)(7)(i)(A)(2). However, as a supplier of custom orthotics, Petitioner is only relieved of the requirement of 42 C.F.R. § 424.57(c)(7)(i)(A)(1), which is the requirement to have a facility of 200 square feet. Contrary to what Petitioner seems to believe, there is no exception for the requirements to have a location accessible to the public and CMS or its agents; staffed and accessible during posted hours of operation; with signage identifying the location as Petitioner's and posted hours of operation; and with space for retaining required records. 42 C.F.R. § 424.57(c)(7)(i)(B) – (F). Even if Petitioner is a "closed door" business within the meaning of 42 C.F.R. § 424.57(c)(7)(iii), which I also accept for purposes of summary judgment, the regulation specifically provides that "'[c]losed door' businesses must comply with all the requirements of" 42 C.F.R. § 424.57(c)(7). Thus, Petitioner's argument that it fit within an exception to the requirement to be open and accessible with signage and posted hours of operation must be resolved against Petitioner as a matter of law, because there simply is no such exception under 42 C.F.R. § 424.57(c)(7)(i).

Petitioner complains that it was given no opportunity to correct the problem that caused the revocation. P. Ex. 2. However, 42 C.F.R. § 424.57(d) provides that CMS will revoke billing privileges if it is found that a DMEPOS supplier fails to meet a supplier standard. Unlike a revocation pursuant to 42 C.F.R. § 424.535(a)(1), there is no requirement to accord a DMEPOS supplier an opportunity to correct its deficient compliance with supplier standards.

Petitioner also refers in its request for hearing to a shared office arrangement and that business signage and hours of operation can be posted at that office. P. Ex. 2; RFH. I am uncertain as to Petitioner's intent in raising this issue. I have no authority to authorize a corrective action plan proposed by Petitioner. I also note that Supplier Standard 29, with limited exceptions, prohibits a DMEPOS supplier from sharing office space with any other Medicare supplier or provider. 42 C.F.R. § 424.57(c)(29).

Pursuant to 42 C.F.R. § 424.57(e), revocation of Medicare enrollment and billing privileges for violation of 42 C.F.R. § 424.57(b) or (c), is effective 15 days after the notice of revocation.

## III. Conclusion

I conclude, after viewing the evidence before me in the light most favorable to Petitioner and drawing all inferences in Petitioner's favor, that summary judgment is appropriate. The undisputed evidence shows that there is a basis for the revocation of Petitioner's Medicare billing privileges effective April 25, 2015.

/s/
Keith W. Sickendick
Administrative Law Judge