

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Shameika Washington  
(OI File No. H-15-41791-9),

Petitioner,

v.

The Inspector General.

Docket No. C-15-4058

Decision No. CR4578

Date: April 7, 2016

**DECISION**

I sustain the determination of the Inspector General (I.G.), to exclude Petitioner, Shameika Washington, from participating in Medicare, Medicaid, and all other federally funded health care programs for a period of five years. Exclusion is mandated by section 1128(a)(2) of the Social Security Act (Act) and is for the minimum period required by law. Act, § 1128(c)(3)(B).

**I. Background**

Petitioner requested a hearing in order to challenge the I.G.'s exclusion determination. The I.G. filed a brief plus eight proposed exhibits (I.G Ex. 1-I.G. Ex. 8) to support the determination. Petitioner filed no exhibits but filed a statement in opposition to the determination. I receive the I.G.'s exhibits into the record. Neither the I.G. nor Petitioner offered witness testimony. Consequently, I decide the case based on the parties' written exchanges.

## II. Issue, Findings of Fact and Conclusions of Law

### A. Issue

The issue is whether the I.G. is required to exclude Petitioner.

### B. Findings of Fact and Conclusions of Law

Section 1128(a)(2) of the Act mandates the exclusion of any individual who is convicted of:

a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

Act, § 1128(a)(2).

The I.G. offered undisputed proof that, on May 12, 2015, Petitioner was convicted of a crime under Mississippi State law. Specifically, Petitioner pled guilty to violating section 41-10-1 of Mississippi's Code of 1972. I.G. Exs. 2-3. This section makes it a crime for an individual to willfully or recklessly place, or direct another individual to place, in a patient's medical record or chart misleading or inaccurate information regarding the diagnosis, care, treatment or cause of a patient's condition. *Id.* Petitioner was sentenced to a suspended sentence of imprisonment and was ordered to pay criminal fines, assessments, and costs. I.G. Exs. 5-6.

The conviction arose from Petitioner's failure to provide proper care to a patient while employed as a licensed practical nurse and her subsequent attempt to cover up that misfeasance. I.G. Ex. 2. The evidence establishes that Petitioner failed to provide a patient with appropriate wound care (changing the patient's dressing) as was directed by the patient's treating physician and then, wrote in the patient's chart that she had provided the care when, in fact, she had not done so. *Id.*

These facts establish that Petitioner was convicted of a crime relating to patient neglect. She was convicted of placing misleading or inaccurate information in a patient's medical record. That conviction, on its face, is a conviction for "neglect" – failure to provide required care to a patient – within the common and ordinary meaning of the term. Moreover, the underlying conduct that was the basis for the criminal charge, consisting of failing to provide appropriate care as directed and then covering up that failure, is also neglect. Consequently, Petitioner was convicted of a criminal offense as is described at section 1128(a)(2) and exclusion is mandatory.

