

Department of Health And Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Rosa María Martínez, M.D.,	)	Date: September 4, 2007
	)	
Petitioner,	)	Docket No. C-07-124
	)	
- v.-	)	Decision No. CR1645
	)	
The Inspector General.	)	
_____	)	

**DECISION**

I sustain the determination of the Inspector General (I.G.) to exclude Petitioner, Rosa María Martínez, M.D., from participating in the Medicare, Medicaid, and all other federal health care programs, until reinstated to the health care program which originally took the action against her. I base my decision on the documentary evidence, the applicable law and regulations, and the arguments of the parties. It is my finding that Petitioner has been suspended, excluded or otherwise sanctioned by the State of Washington Department of Social and Health Services (DSHS) Medicaid program, a State health care program, for reasons bearing on her professional competence, professional performance or financial integrity, within the meaning of section 1128(b)(5) of the Social Security Act (Act).

By letter dated September 29, 2006, the I.G. notified Petitioner that she was being excluded from participation in the Medicare, Medicaid, and all federal health care programs as defined in section 1128B(f) of the Act until reinstated to the health care program which originally took the action against her. The I.G. informed Petitioner that her exclusion was imposed under section 1128(b)(5) of the Act, because she was “suspended, excluded or otherwise sanctioned by the Washington Department of Social and Health Services, a Federal program involving the provision of health care or a State health care program, for reasons bearing on [her] professional competence, professional performance or financial integrity.” I.G. Ex. 1.

Petitioner filed a request for hearing dated November 6, 2006, and received by the Departmental Appeals Board on December 1, 2006.

Pursuant to a telephone prehearing conference held on April 18, 2007, I issued an order establishing briefing deadlines based on the parties' agreement that this case could be resolved on the basis of written submissions, without the need for an in-person hearing.

Pursuant to that order, the I.G. filed a brief on May 16, 2007, accompanied by four proposed exhibits. I have admitted these into the record as I.G. Exs. 1-4, without objection. Petitioner failed to file her brief that was due on or before June 18, 2007. Consequently, I issued an order to show cause on June 29, 2007, admonishing her that if she failed to comply with the order or show good cause within 10 days of the date of my order, I would dismiss the case for abandonment. On July 1, 2007, Petitioner responded, essentially indicating that she would not submit a response brief. I therefore issued a letter on July 13, 2007, closing the record and informing the parties that I would move forward to the issuance of a decision based on the submissions already in the record.

After a review of the applicable law and regulations, the documentary evidence of record, and the arguments presented before me, it is my decision to sustain the determination of the I.G. to exclude Petitioner from participating in the Medicare, Medicaid, and all federal health care programs, until she is reinstated to the health care program which originally suspended her.

### **ISSUE**

Whether the I.G. had a basis upon which to exclude Petitioner from participation in the Medicare, Medicaid, and all federal health care programs as defined in section 1128B(f) of the Act.

### **APPLICABLE LAW AND REGULATIONS**

Sections 1128(b)(5)(A) and (B) of the Act authorize the I.G. to exclude an individual who has been suspended or excluded from participation, or otherwise sanctioned, under any federal program, or a state health care program, for reasons bearing on the individual's professional competence, professional performance, or financial integrity. According to section 1128(c)(3)(E) of the Act, the minimum term of exclusion of an individual who is excluded pursuant to section 1128(b)(5) shall not be less than the period during which he or she is excluded or suspended from a federal or state health care program.

The Act defines “[f]ederal health care program” as “(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government . . .; or (2) any State health care program, as defined in section 1128(h).” Act, section 1128B(f).

The regulations promulgated at 42 C.F.R. §§ 1001.601 and 1001.1901(b) mirror the statutory measures set forth in the Act.

Pursuant to 42 C.F.R. § 1001.2007, an individual or entity excluded under section 1128(b)(5) of the Act may file a request for a hearing before an administrative law judge.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Petitioner was a physician providing medical services to Medicaid patients in the State of Washington. I.G. Exs. 3 and 4.
2. On April 7, 2004, pursuant to Wash. Admin. Code § 388-502-0030, the DSHS’s Medical Assistance Administration (MAA) suspended Petitioner’s “Core Provider Agreement” with the Washington Medicaid program based on a MAA medical audit’s finding of “disconcerting patterns” of prescribing high doses of controlled substances, which represented a serious threat to the health and safety of their Medicaid clients and placed them at risk. I.G. Ex. 3.
3. On December 16, 2005, after conducting a dispute conference with Petitioner, considering documentation outlining the reasons for the April 7, 2004 Medicaid contract suspension of Petitioner, and her response to that suspension, the DSHS sent Petitioner its “Contract Termination Dispute Decision,” which notified Petitioner that the earlier decision of DSHS was affirmed, the contracts were appropriately suspended in the interest of protecting the health and safety of its Medicaid clients, and it was appropriate to terminate Petitioner’s contracts with DSHS as provided in Wash. Admin. Code § 388-502-0030. I.G. Ex. 4, at 1-3.
4. Petitioner’s contract termination from the Washington Medicaid program was based on four reasons: (1) Petitioner’s medical records showed a pattern of prescribing narcotics and controlled substances in doses and combinations that exceeded safe levels and accepted medical practice; (2) Petitioner’s medical records did not justify the services billed to Medicaid; (3) Petitioner re-dispensed narcotics and other drugs without proper documentation in violation of federal law; and (4) Petitioner’s billing patterns for office visits were significantly higher than the average for similar providers. I.G. Ex. 4, at 1-3.

5. The DSHS decision informed Petitioner that her Medicaid contract termination was based on the same concerns that led to the contract suspension on April 7, 2004. I.G. Ex. 4, at 3. The decision also informed Petitioner that DSHS would continue to deny payment for her prescriptions unless she was reenrolled with the Medicaid program. I.G. Ex. 4, at 3.
6. On September 29, 2006, the Department of Health and Human Services advised Petitioner that she was being excluded from participation in the Medicare, Medicaid, and all federal health care programs pursuant to section 1128(b)(5) of the Act for reasons bearing on her professional competence, professional performance, or financial integrity. I.G. Ex. 1.
7. Petitioner's termination from participation in the Washington Medicaid program constitutes an exclusion or suspension or other sanction within the meaning of section 1128(b)(5)(B) of the Act.
8. The Washington Medicaid program is a state health care program, within the meaning of sections 1128(h) and 1128(b)(5)(B) of the Act.
9. Petitioner's contracts with the Washington Medicaid program were terminated for reasons bearing on her professional competence, professional performance, or financial integrity, within the meaning of section 1128(b)(5)(B) of the Act. I.G. Exs. 1, 3, and 4.
10. There is a basis for excluding Petitioner under section 1128(b)(5)(B) of the Act.
11. An exclusion imposed in accordance with section 1128(b)(5) of the Act will not be for a period of time less than the period during which the individual is excluded or suspended from a federal or state health care program. 42 C.F.R. § 1001.601(b)(1).
12. Petitioner is excluded from Medicare, Medicaid, and all federal health care programs until she has been reinstated to the Washington State DSHS Medicaid program, the health care program that originally disciplined her. I.G. Ex. 1.

**CONCLUSION**

It is my decision that the I.G. was authorized to exclude Petitioner pursuant to section 1128(b)(5) of the Act. Additionally, I conclude that the indefinite period of exclusion imposed by the I.G. is the minimum period mandated by section 1128(c)(3)(E) of the Act.

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José A. Anglada  
Administrative Law Judge