

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Robin M. Annecharico  
(OI File No. H-13-42385-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-1083

Decision No. CR3357

Date: September 5, 2014

**DECISION**

I sustain the determination of the Inspector General (I.G.) of the Department of Health and Human Services to exclude Petitioner, Robin M. Annecharico, from participating in Medicare, Medicaid, and all other federally funded health care programs for the statutory minimum period of five years. Petitioner's exclusion is required pursuant to section 1128(a)(1) of the Social Security Act (Act) because the evidence before me establishes that she was convicted of six counts of Medicaid fraud.

**I. Background**

The I.G. excluded Petitioner, a nurse, for five years effective March 20, 2014, based on her guilty plea in the Berkshire (County) Superior Court, Massachusetts, to, among other offenses, six counts of Medicaid fraud. I.G. Exhibit (Ex.) 1, at 1. Petitioner requested a hearing to challenge her exclusion. Following a prehearing conference by telephone, I directed the parties to file briefs and proposed exhibits. The I.G. filed its brief and three proposed exhibits identified as I.G. Ex. 1 – I.G. Ex. 3. Petitioner filed a brief and 12 proposed exhibits identified as P. Ex. 1 – P. Ex. 12. The I.G. waived its opportunity to

file a reply brief. In the absence of objections, I receive the parties' exhibits into the record. Neither party requested an in-person hearing, so I decide this case based on the written record.

## II. Issue

The only issue presented here is whether the I.G. has a statutory basis for excluding Petitioner. The length of exclusion is not at issue because the I.G. has relied on a mandatory exclusion authority and imposed the statutory minimum exclusion period of five years. 42 C.F.R. § 1001.2007(a)(2).

## III. Findings of Fact and Conclusions of Law

I find that section 1128(a)(1) of the Act mandates Petitioner's exclusion from participation in Medicare, Medicaid, and all federally funded health care programs. Section 1128(c)(3)(B) of the Act mandates that the exclusion in this case be for at least five years.

The undisputed evidence before me demonstrates that Petitioner pled guilty to, among other charges, six counts of defrauding the Massachusetts Medicaid system. I.G. Ex. 2. Specifically, by pleading guilty to these criminal charges, Petitioner admitted that she "did knowingly and willfully make or cause to be made a false statement or representation of material fact in an application for payment" under the Massachusetts Medicaid program. I.G. Ex. 3, at 20-30. She acknowledged a total of \$23,126 in false claims. Submitting false claims to a Medicaid program is an offense directly related to the delivery of and payment for services under a state health care program. Act §§ 1128(a)(1), 1128(h)(1) (defining "state health care program" to include a program under Title XIX of the Act, *i.e.*, Medicaid). The Act considers a guilty plea to be a "conviction" for purposes of section 1128. Act § 1128(i)(3). Indeed, Petitioner explicitly agrees that the I.G. has proven a mandatory basis for her exclusion from participation. P. Br. at 1.

Petitioner argues that there are issues that the Massachusetts Attorney General (AG) did not consider during her underlying criminal case, and that she was "railroaded" into providing incriminatory evidence to the State. P. Br. at 1. She claims that she cared for three special needs siblings, including occasions when Petitioner traveled with the family, and exceeded the maximum number of hours per week than she was permitted to bill Medicaid for reimbursement. She overbilled Medicaid as a form of "paid time off" because she had worked unpaid double-shifts earlier. P. Br. at 2. She also claims that there is inadequate training for nurses about how to bill Medicaid. Petitioner further asserts that her guilty plea was to "trumped up charges," and that no one explained to her the significant repercussions an exclusion action would have before she pled guilty to the offenses she did. P. Br. at 2.

All of Petitioner's assertions and arguments are nothing more than an airing of grievances against the Massachusetts AG and the Massachusetts Medicaid reimbursement for nurses who may work longer hours than what Massachusetts Medicaid program will cover. However, low reimbursement rates, or even slow reimbursement for appropriate claims do not authorize the fraudulent billing scheme that Petitioner engaged in here. More to the point, Petitioner's arguments attempt to explain *why* she was convicted, and thus amount to collateral attacks on her conviction. The regulation that provides Petitioner her right to appeal the I.G.'s exclusion action expressly precludes my review of any such collateral attacks. 42 C.F.R. § 1001.2007(d). Thus, while Petitioner has plenty to say about Massachusetts Medicaid policy and about the facts of her case demonstrating a systemic issue with that Medicaid program, I have no authority to consider Petitioner's arguments or modify her exclusion based on those arguments.

Finally, Petitioner disputes "the severity of [her] sentencing and subsequent punishment relative to mitigating evidence." P. Br. at 3. It is not clear from her argument whether Petitioner is referring to the length and scope of her exclusion or to the state court's sentence of her in the underlying criminal case. Clarifying that discrepancy is not important because I do not have authority to reduce Petitioner's mandatory exclusion to a period of less than five years, and I certainly do not have authority to modify or address the correctness of the state court's sentence of Petitioner. 42 C.F.R. § 1001.2007(a)(2). Petitioner's "mitigating evidence," simply relates back her ongoing criticisms about the policies of the Massachusetts Medicaid program, but, even if those complaints met the mitigating factors recognized in the applicable regulations – which they clearly do not – they are not reviewable because the I.G. here imposed the minimum exclusion period and did not rely on aggravating factors. 42 C.F.R. § 1001.102(c). Finally, to the extent Petitioner challenges the scope of her exclusion, which she may view as "punishment," I note that Congress long ago outlined the broad scope of exclusions, which it deemed necessary to protect federally funded health care programs. Act § 1128(a). Regardless of how much she may regret it, based on her convictions Petitioner fits squarely into the type of individual from whom Congress sought to protect federal health care programs.

/s/

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Steven T. Kessel  
Administrative Law Judge