

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Integrative Rehabilitation Associates, LLC
(NPI: 1366831984, PTAN: 397967)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-842

Decision No. CR4750

Date: December 5, 2016

DECISION

I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) sustaining the determination of a Medicare contractor to revoke the Medicare billing privileges of Petitioner, Integrative Rehabilitation Associates, LLC.¹

I. Background

Petitioner filed a hearing request in order to challenge a Medicare contractor's determination to revoke Petitioner's Medicare billing privileges, as affirmed upon reconsideration and accepted by CMS. CMS moved for summary judgment, filing a brief plus eight supporting exhibits that it identified as CMS Ex. 1-CMS Ex. 8. Petitioner filed a brief in opposition and an exhibit identified as P. Ex. 1. I receive the parties' exhibits into the record.

¹ Petitioner does business as a practice entity. The practice entity constitutes the services of Melissa Rusli, D.O. Throughout this decision I refer to "Petitioner" and "it" to describe Doctor Rusli's practice entity.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether undisputed material facts establish a basis for CMS to revoke Petitioner's Medicare billing privileges.

B. Findings of Fact and Conclusions of Law

CMS alleges that there are two grounds supporting the determination to revoke Petitioner's billing privileges. First, CMS contends that revocation may be predicated on the fact that Petitioner was not "operational" as that term is used in 42 C.F.R. § 424.535(a)(5)(i). Second, CMS contends that it may revoke Petitioner's billing privileges pursuant to 42 C.F.R. § 424.535(a)(9) because Petitioner did not timely report to a Medicare contractor a change in its practice location as is required by 42 C.F.R. § 424.516(d)(1)(iii).

I find it to be unnecessary that I decide whether the determination to revoke may be based on Petitioner's failure to be operational. The undisputed facts plainly establish that Petitioner failed to report a change in its practice location as is required by regulation. Therefore, CMS and its contractor may revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(9).

These are the undisputed facts. Petitioner filed a Medicare enrollment form that a Medicare contractor received on February 6, 2015. CMS Ex. 2. In that form Petitioner stated that its practice location was 120 East Main Street, Suite 109, Ramsey, NJ 07446. Petitioner averred that it first began treating patients at that address on January 1, 2015. *Id.* at 15-16. Petitioner sent additional documentation to the contractor on March 1, 2015, in which it again listed its business address as 120 East Main Street, Suite 109, Ramsey, NJ 07446. CMS Ex. 3 at 4.

On February 4, 2016, a representative of the contractor attempted to conduct an on-site visit of Petitioner's facility. The representative went to 120 East Main Street, the address previously submitted by Petitioner as its practice location, and found that Petitioner was not doing business at that location. CMS Ex. 5. The business entity at that address was a UPS store. *Id.* Subsequently, Petitioner averred that it was doing business at addresses in Clifton, NJ, and Paterson, NJ. CMS Ex. 7.

A participating provider or supplier must report within 30 days any change in practice location. 42 C.F.R. § 424.516(d)(1)(iii). Failure to do so may be grounds for revocation of billing privileges. 42 C.F.R. § 424.535(a)(9). The undisputed facts prove

unequivocally that Petitioner failed to comply with regulatory requirements in not reporting its actual practice locations within 30 days of establishing them. Consequently, the contractor and CMS may revoke Petitioner's billing privileges.

I note that in this case, it is not just that Petitioner failed to report its practice locations to the contractor as is required by regulations. In fact, Petitioner actually misrepresented its practice locations by averring twice that it was treating patients at an address that is, in fact, a UPS store.

Petitioner admits that it failed to provide accurate information to the contractor as to its practice locations and failed to report its true practice locations within 30 days, as is required by regulation. P. Ex. 1. In her affidavit, Dr. Rusli asserts that this failure was an inadvertent error, an error resulting from her misplaced reliance on a third party, who filed forms with the contractor on her behalf. That may be so, but it is no defense to Petitioner's failure to comply with regulatory requirements. The regulations place the burden of compliance on the participating suppliers and providers. If they rely on other individuals to report on their behalf they must assure that the information that these individuals provide is accurate. By her own admission, Petitioner failed to do that.

Petitioner's assertion that its reporting errors were inadvertent boils down to an equitable argument. In effect, Petitioner contends that it would be unfair to revoke its billing privileges based on what was, at bottom, an innocent and inadvertent error. That is an equitable argument that I have no authority to consider. Moreover, Petitioner's failure to report accurately its business address is not a harmless error when one considers that CMS must oversee the performance of many thousands of suppliers and providers. CMS and its contractors simply do not have the resources to research the true business locations of these individuals and entities. That is why the regulations vest the responsibility to report accurately in the providers and suppliers and it is why there are penalties for failure to do so.

_____/s/_____
Steven T. Kessel
Administrative Law Judge