

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Ridgeview Manor Nursing Facility,	)	Date May 10, 2007
(CCN No. 42-5370),	)	
	)	
Petitioner,	)	Docket No. C-07-341
	)	Decision No. CR1593
- v. -	)	
	)	
Centers for Medicare & Medicaid	)	
Services.	)	
_____	)	

**DECISION**

By letter dated March 8, 2007, the Centers for Medicare & Medicaid Services (CMS) notified Petitioner, Ridgeview Manor Nursing Facility, located in Hopkins, South Carolina (CCN No. 42-5370), that its provider agreement was to be terminated. CMS imposed other remedies as well. On March 30, 2007, Petitioner filed a request for expedited hearing. On April 30, 2007, CMS and Petitioner filed their Joint Stipulations consisting of 68 separate findings. Their Joint Stipulations recite that there are no factual issues in dispute between the parties, and set forth as the only issue of law an issue that I am not authorized to decide. Accordingly, I uphold CMS's determination to terminate Petitioner's participation in the Medicare program and impose the other remedies included in CMS's notice letter of March 8, 2007.

**I. Background**

This case is before me pursuant to Petitioner's request for an expedited hearing dated March 30, 2007. It arises in the context of CMS's proposed termination of Petitioner's participation in the Medicare program.<sup>1</sup> During a telephone prehearing

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<sup>1</sup> A proceeding related to this case is pending before the United States District Court for the District of South Carolina, Columbia Division, in *Ridgeview Manor of the Midlands, L.P., Cimerron Properties, Inc., and Sterling Healthcare, Inc., Plaintiffs, v.*

conference I held on April 23, 2007, I concurred with Petitioner that expedited resolution of the issues raised in its hearing request was required. The parties agreed that my disposition of the case must resolve all issues that I could legitimately resolve and that I must refuse or decline to address issues beyond my jurisdiction. The parties understood that such a disposition must necessarily affirm Petitioner's termination and other remedies imposed by CMS on the basis of the uncontested facts, and must decline or refuse to entertain any challenge by Petitioner to the regulations by which CMS purports to impose the remedy of termination. Accordingly, the parties agreed to file, among other things, a stipulation as to all material facts supporting CMS's citations of deficiency and all its proposed remedies which were imposed against Petitioner. The parties have done so, and I set forth the parties' Joint Stipulations verbatim below. Other details of the prehearing conference are summarized in my Order of April 24, 2007.

## **II. Issue**

The only issue in this case is the validity of the regulations set out at 42 C.F.R. §§ 488.412, 488.456 and 489.53, an issue I am without the authority to decide.

## **III. Joint Stipulations**

1. Petitioner was out of substantial compliance with twenty seven (27) of the requirements for long term care facilities as of the February 14, 2007 survey.
2. Petitioner does not dispute any of the factual findings cited under the twenty seven deficiencies cited in the February 14, 2007 CMS Form 2567 ("Statement of Deficiencies").
3. Petitioner was out of substantial compliance with three (3) of the requirements for long term care facilities as of the February 13, 2007 Life Safety Code Survey.
4. Petitioner does not dispute any of the factual findings cited under the three (3) Life Safety code deficiencies cited in the February 13, 2007 CMS Form 2567.
5. No issues of material fact exist in Petitioner's Appeal.

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*Michael O. Leavitt, Secretary of the United States Department of Health and Human Services, Leslie V. Norwalk, Esq., Acting Administrator of the Centers for Medicare & Medicaid Services, and Robert M. Kerr, Director of the South Carolina Department of Health and Human Services, Defendants, C/A No.: 3:07-cv-00861-JFA.*

6. Petitioner's Appeal only involves a question of law.
7. Petitioner[']s only issue on appeal is the validity of the regulations set out at 42 C.F.R. §§ 488.412, 488.456 and 489.53.
8. The only issue that the parties contest is the validity of 42 C.F.R. §§ 488.412, 488.456 and 489.53, which purport to grant CMS the authority to terminate a provider in the absence of a finding of immediate jeopardy.
9. Petitioner was out of substantial compliance with 42 C.F.R. § 483.10(b)(5)-(10), 483.10(b)(1)([Tag] F156)-NOTICE OF RIGHTS AND SERVICES as of the February 14, 2007 survey.
10. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.10(b)(5)-(10), 483.10(b)(1) in the Statement of Deficiencies dated February 14, 2007.
11. Petitioner was out of substantial compliance with 42 C.F.R. § 483.10(c)(2)-(5) (Tag F159)-PROTECTION OF RESIDENT FUNDS as of the February 14, 2007 survey.
12. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.10(c)(2)-(5) in the Statement of Deficiencies dated February 14, 2007.
13. Petitioner was out of substantial compliance with 42 C.F.R. § 483.10(c)(6) (Tag F160)-CONVEYANCE UPON DEATH as of the February 14, 2007 survey.
14. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.10(c)(6) in the Statement of Deficiencies dated February 14, 2007.
15. Petitioner was out of substantial compliance with 42 C.F.R. § 483.10(e), 483.75(l)(4) (Tag F164)-PRIVACY AND CONFIDENTIALITY as of the February 14, 2007 survey.
16. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.10(e), 483.75(l)(4) in the Statement of Deficiencies dated February 14, 2007.
17. Petitioner was out of substantial compliance with 42 C.F.R. § 483.10(g)(1) (Tag F167)-EXAMINATION OF SURVEY RESULTS as of the February 14, 2007 survey.
18. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.10(g)(1) in the Statement of Deficiencies dated February 14, 2007.

19. Petitioner was out of substantial compliance with 42 C.F.R. § 483.13(c)(1)(ii)-(iii), (c)(2)-(4)(Tag F255)-STAFF TREATMENT OF RESIDENTS as of the February 14, 2007 survey.

20. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.13(c)(1)(ii)-(iii), (c)(2)-(4) in the Statement of Deficiencies dated February 14, 2007.

21. Petitioner was out of substantial compliance with 42 C.F.R. § 483.15(g)(1)(Tag F250)-SOCIAL SERVICES as of the February 14, 2007 survey.

22. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.15(g)(1) in the Statement of Deficiencies dated February 14, 2007.

23. Petitioner was out of substantial compliance with 42 C.F.R. § 483.15(h)(2)(Tag F253)-HOUSEKEEPING AND MAINTENANCE as of the February 14, 2007 survey.

24. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.15(h)(2) in the Statement of Deficiencies dated February 14, 2007.

25. Petitioner was out of substantial compliance with 42 C.F.R. § 483.20(g)-(j)(Tag F278)-RESIDENT ASSESSMENT as of the February 14, 2007 survey.

26. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.20(g)-(j) in the Statement of Deficiencies dated February 14, 2007.

27. Petitioner was out of substantial compliance with 42 C.F.R. § 483.20(d)(3), 483.10(k)(2)(Tag F280)-COMPREHENSIVE CARE PLANS as of the February 14, 2007 survey.

28. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.20(d)(3), 483.10(k)(2) in the Statement of Deficiencies dated February 14, 2007.

29. Petitioner was out of substantial compliance with 42 C.F.R. § 483.20(k)(3)(ii)(Tag F282)-COMPREHENSIVE CARE PLANS as of the February 14, 2007 survey.

30. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.20(k)(3)(ii) in the Statement of Deficiencies dated February 14, 2007.

31. Petitioner was out of substantial compliance with 42 C.F.R. § 483.20(f)(Tag F287)-AUTOMATED DATA PROCESSING as of the February 14, 2007 survey.
32. Petitioner does not dispute any of the factual findings under 42 C.F.R. § 483.20(f) in the Statement of Deficiencies dated February 14, 2007.
33. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(Tag F309)-QUALITY OF CARE as of the February 14, 2007 survey.
34. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25 in the Statement of Deficiencies dated February 14, 2007.
35. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(c)(Tag F314)-PRESSURE SORES as of the February 14, 2007 survey.
36. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(c) in the Statement of Deficiencies dated February 14, 2007.
37. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(d)(Tag F315)-URINARY INCONTINENCE as of the February 14, 2007 survey.
38. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(d) in the Statement of Deficiencies dated February 14, 2007.
39. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(h)(1)(Tag F323)-ACCIDENTS as of the February 14, 2007 survey.
40. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(h)(1) in the Statement of Deficiencies dated February 14, 2007.
41. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(h)(2)(Tag F324)-ACCIDENTS as of the February 14, 2007 survey.
42. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(h)(2) in the Statement of Deficiencies dated February 14, 2007.
43. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(m)(1)(Tag F332)-MEDICATION ERRORS as of the February 14, 2007 survey.
44. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(m)(1) in the Statement of Deficiencies dated February 14, 2007.

45. Petitioner was out of substantial compliance with 42 C.F.R. § 483.25(n)(Tag F334)-INFLUENZA AND PNEUMOCOCCAL IMMUNIZATION as of the February 14, 2007 survey.
46. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.25(n) in the Statement of Deficiencies dated February 14, 2007.
47. Petitioner was out of substantial compliance with 42 C.F.R. § 483.35(e)(Tag F367)-THERAPEUTIC DIETS as of the February 14, 2007 survey.
48. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.35(e) in the Statement of Deficiencies dated February 14, 2007.
49. Petitioner was out of substantial compliance with 42 C.F.R. § 483.35(i)(2)(Tag F371)-SANITARY CONDITIONS-FOOD PREP & SERVICE as of the February 14, 2007 survey.
50. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.35(i)(2) in the Statement of Deficiencies dated February 14, 2007.
51. Petitioner was out of substantial compliance with 42 C.F.R. § 483.60(c)(Tag F428)-DRUG REGIMEN REVIEW as of the February 14, 2007 survey.
52. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.60(c) in the Statement of Deficiencies dated February 14, 2007.
53. Petitioner was out of substantial compliance with 42 C.F.R. § 483.65(a)(Tag F441)-INFECTION CONTROL as of the February 14, 2007 survey.
54. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.65(a) in the Statement of Deficiencies dated February 14, 2007.
55. Petitioner was out of substantial compliance with 42 C.F.R. § 483.65(b)(3)(Tag F444)-PREVENTING SPREAD OF INFECTION as of the February 4, 2007 survey.
56. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.65(b)(3) in the Statement of Deficiencies dated February 14, 2007.
57. Petitioner was out of substantial compliance with 42 C.F.R. § 483.65(c)(Tag F445)-INFECTION CONTROL-LINENS as of the February 14, 2007 survey.

58. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.65(c) in the Statement of Deficiencies dated February 14, 2007.
59. Petitioner was out of substantial compliance with 42 C.F.R. § 483.70(h)(1)(Tag F466)-OTHER ENVIRONMENTAL CONDITIONS-WATER as of the February 14, 2007 survey.
60. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.70(h)(1) in the Statement of Deficiencies dated February 14, 2007.
61. Petitioner was out of substantial compliance with 42 C.F.R. § 483.75(j)(1)(Tag F502)-LABORATORY SERVICES as of the February 14, 2007 survey.
62. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.75(j)(1) in the Statement of Deficiencies dated February 14, 2007.
63. Petitioner was out of substantial compliance with 42 C.F.R. § 483.70(a)(Tag K050)-NFPA 101 LIFE SAFETY CODE STANDARD as of the February 13, 2007 Life Safety Code survey.
64. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.70(a)(Tag K050) in the Statement of Deficiencies dated February 13, 2007.
65. Petitioner was out of substantial compliance with 42 C.F.R. § 483.70(a)(Tag K051)-NFPA 101 LIFE SAFETY CODE STANDARD as of the February 13, 2007 Life Safety Code survey.
66. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.70(a)(Tag K051) in the Statement of Deficiencies dated February 13, 2007.
67. Petitioner was out of substantial compliance with 42 C.F.R. § 483.70(a)(Tag K147)-NFPA 101 LIFE SAFETY CODE STANDARD as of the February 13, 2007 Life Safety Code survey.
68. Petitioner does not dispute any of the factual findings cited under 42 C.F.R. § 483.70(a)(Tag [K]147) in the Statement of Deficiencies dated February 13, 2007.

#### **IV. Discussion**

Based on the parties' Joint Stipulations, I find that no issues of material fact exist. The only remaining issue is one of law, and it concerns the validity of the regulations set out at 42 C.F.R. §§ 488.412, 488.456 and 489.53, which purport to

grant CMS the authority to terminate a provider in the absence of a finding of immediate jeopardy. I am without authority to consider this issue, as it is explicitly beyond my authority to resolve. My authority is limited to hearing and deciding those issues which the Secretary of Health and Human Services (Secretary) has delegated authority to Administrative Law Judges (ALJs) to hear and decide. Here the Secretary has delegated to ALJs the authority to hear cases involving specified initial determinations by CMS as set forth in 42 C.F.R. §§ 498.3 and 498.5. These initial determinations do not include the issue Petitioner is contesting. I have no authority to ignore or to hold invalid any regulation promulgated by the Secretary. *Hermina Traeye Memorial Nursing Home*, DAB No. 1810, at 17 (2002); *Sentinel Medical Laboratories, Inc.*, DAB No. 1762, at 9 (2001).

## **V. Conclusion**

As I am unable to hear the issue of law Petitioner is contesting, and as the parties have stipulated that there are no material facts in dispute, I uphold the remedies imposed upon Petitioner by CMS, including the termination of Petitioner's provider agreement.

/s/

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Richard J. Smith  
Administrative Law Judge