Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Natalie M. Evans,
(O.I. File No. M-11-40527-9),

Petitioner,

v.

The Inspector General.

Docket No. C-12-1187

Decision No. CR2766

Date: April 25, 2013

DECISION

Petitioner, Natalie Evans, appeals the determination of the Inspector General (I.G.) for the U.S. Department of Health and Human Services to exclude Petitioner from participating in Medicare, Medicaid, and all federal health care programs pursuant to section 1128(a)(1) of the Social Security Act (Act) (42 U.S.C. § 1320a-7(a)(1)) for a period of 10 years. For the reasons explained below, I find that there is a basis for the I.G. to exclude Petitioner and that an exclusion period of 10 years is reasonable based on three aggravating factors and one mitigating factor.

I. Background and Procedural History

Petitioner was president of Vision of Hope Recovery, Inc., which operated five halfway houses in the Fort Lauderdale, Florida area. On October 3, 2011, Petitioner pleaded guilty to one count of conspiracy to commit health care fraud for her part in a fraudulent Medicare billing scheme. In a letter dated June 29, 2012, the I.G. notified Petitioner that she was being excluded from participating in Medicare, Medicaid and all federal health care programs effective July 19, 2012, based on her conviction in the United States District Court for the Southern District of Florida of a criminal offense related to the

delivery of an item or service under the Medicare or a state health care program. The I.G. excluded Petitioner for 10 years, five years above the statutory minimum exclusion period for mandatory exclusions, based on the presence of three aggravating factors: (1) the acts resulting in her conviction caused, or were intended to cause a financial loss to a Government program of $5,000 or more; (2) the acts resulting in her conviction were committed over a period of one year or more; and (3) the court's sentence of Petitioner included incarceration.

By letter dated August 6, 2012, Petitioner, appearing *pro se*, requested a hearing before an administrative law judge (ALJ), arguing that there is no basis for her exclusion and the length of her exclusion is unreasonable. This case was assigned to me for a possible hearing and written decision. On September 26, 2012, I convened a prehearing conference by telephone, the substance of which I summarized in my Order and Schedule for Filing Briefs and Documentary Evidence issued September 27, 2012. On October 24, 2012, the I.G. filed a motion for summary judgment, prehearing brief (I.G. Br.), and five proposed exhibits (I.G. Exs. 1-5). After receiving an extension of time to file, Petitioner filed an informal brief (P. Br.) as well as nine pages of supporting documents, which the Civil Remedies Division (CRD) received on December 11, 2012. The I.G. submitted a reply brief (I.G. Reply Br.) on January 14, 2013. For clarity, the I.G. resubmitted the nine pages of exhibits that Petitioner filed, labeled as "P. Ex. 1" and numbered consecutively. This decision refers to Petitioner's supporting documents according to how the I.G. has labeled and resubmitted them.

Petitioner stated in one of her supporting documents that she "assisted the government in their investigation." P. Ex. 1, at 4. Petitioner also claimed that she "was asked to testify against Joseph Williams," her co-defendant. P. Ex. 1, at 4. Based on these statements, I issued an Order to Supplement the Record on January 29, 2013, which directed Petitioner to provide any evidence or explanation about the "scope of her assistance and what actions, if any, happened as a result of her cooperation with investigators." In response to this order, on February 15, 2013, CRD received a faxed statement from Richard Perlini, Esquire (Perlini Statement), who represented Petitioner during her criminal proceedings. Petitioner also filed an undated written response, which CRD received on February 21, 2013. On March 6, 2013, the I.G. filed a response brief (I.G. Resp. Br.) as well as one additional proposed exhibit (I.G. Ex. 6).

Petitioner has not objected to the I.G.'s proposed exhibits. Therefore, I.G. Exs. 1-6 are admitted. The I.G. has not objected to Petitioner's supporting documents, relabeled and resubmitted as "P. Ex. 1," or Mr. Perlini's statement. Therefore, P. Ex. 1 and the Perlini Statement are admitted. In addition, neither party requested an in-person hearing. I.G.

Br. at 2; P. Br. at 4 (unnumbered).[1] Therefore, an in-person hearing is not necessary, and this decision is based on the written record.

II. Discussion

A. Applicable Law

The Social Security Act (Act) requires that the Secretary of the U.S. Department of Health and Human Services (Secretary) exclude from participation in all federal health care programs any "individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under [Medicare] or under any State health care program." Act § 1128(a)(1) (42 U.S.C. § 1320a-7(a)(1)); *see also* 42 C.F.R. § 1001.101(a). Section 1128(a)(1) of the Act does not distinguish between felonies and misdemeanors as predicates for exclusion.

An exclusion made pursuant to section 1128(a)(1) is mandatory. The I.G. must impose such a mandatory exclusion for a minimum period of five years. Act § 1128(c)(3)(B) (42 U.S.C. § 1320a-7(c)(3)(B)); *see* 42 C.F.R. § 1001.102(a). The I.G. may increase an exclusion period based on the presence of certain aggravating factors that the Secretary has established by regulation. 42 C.F.R. § 1001.102(b). Here, the I.G. relied on three aggravating factors to enhance the period of Petitioner's exclusion beyond the minimum mandatory period:

> (1) The acts resulting in the conviction, or similar acts, that caused, or were intended to cause, a financial loss to a Government program or to one or more entities of $5,000 or more. (The entire amount of financial loss to such programs or entities, including any amounts resulting from similar acts not adjudicated, will be considered regardless of whether full or partial restitution has been made);
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> (2) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;
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> * * *

[1] In her informal brief, Petitioner indicated that she did not believe an in-person hearing was necessary. P. Br. at 4. However, Petitioner also indicated that she wanted to present testimony of her prior attorney at an in-person hearing. P. Br. at 4. Petitioner has had an opportunity to present a written statement from her prior attorney (Perlini Statement), which I have admitted into the record. Therefore, an in-person hearing is not necessary to present testimony that would be duplicative of evidence already in the record. *See* P. Br. at 4 (failing to explain why the proposed in-person testimony would not duplicate something already stated in an exhibit).

> (5) The sentence imposed by the court included incarceration[.]

Id. § 1001.102(b)(1), (2), (5); *see* I.G. Ex. 1, at 1.

Where, as here, the I.G. determines that one or more aggravating factors may support increasing an exclusion period beyond the five-year minimum, the I.G. may then consider certain enumerated mitigating factors "as a basis for reducing the period of exclusion to no less than 5 years." 42 C.F.R. § 1001.102(c). Here, Petitioner has argued, and the I.G. has conceded, that the following mitigating factor is present in this case:

> (3) The individual's or entity's cooperation with Federal or State officials resulted in —
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> > (i) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,
> >
> > (ii) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or
> >
> > (iii) The imposition against anyone of a civil money penalty or assessment under part 1003 of this chapter.

Id. § 1001.102(c)(3).

Rights to an ALJ hearing and judicial review of the final action of the Secretary are provided by section 1128(f) of the Act (42 U.S.C. § 1320a-7(f)). The standard of proof is a preponderance of the evidence, and there may be no collateral attack of the conviction that is the basis for the exclusion. 42 C.F.R. § 1001.2007(c), (d). Petitioner bears the burden of proof, and the burden of persuasion on any affirmative defenses or mitigating factors, and the I.G. bears the burden on all other issues. 42 C.F.R. § 1005.15(c). An ALJ reviews the length of an exclusion *de novo* to determine whether it falls within a reasonable range considering any aggravating and mitigating factors. *Sushil Aniruddh Sheth, M.D.*, DAB No. 2491, at 5 (2012) (citing *Joseph M. Rukse, Jr., R.Ph.*, DAB No. 1851, at 10-11 (2002)).

B. Issues

This case presents two issues, which are limited by regulation:

1. whether there is a basis for the I.G. to exclude Petitioner from participation in Medicare, Medicaid, and all federal health care programs; and

2. whether the length of the exclusion is unreasonable.

See 42 C.F.R. § 1001.2007(a)(1). The bases for the underlying criminal conviction, including collateral attacks on substantive or procedural grounds, are not reviewable in this appeal. *Id.* § 1001.2007(d).

C. Findings of Fact and Conclusions of Law

My findings of fact and conclusions of law (FFCL) are set forth below in bold and italics as headings in this section, followed by an analysis for each FFCL.

1. *Petitioner was convicted of conspiracy to commit health care fraud.*

For purposes of a mandatory exclusion, a "conviction" includes "when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court." Act § 1128(i)(3) (42 U.S.C. § 1320a-7(i)(3)). Petitioner acknowledges that she was convicted of a criminal offense. *See* P. Br. at 1 (unnumbered). Petitioner pleaded guilty to conspiracy to commit health care fraud. I.G. Ex. 5, at 1. Petitioner's guilty plea, which the court accepted, demonstrates that she was "convicted" of conspiracy to commit health care fraud.

Petitioner disputes whether she should have been convicted at all, arguing that she was the "victim of this health care fraud" and that she was unaware that her co-defendant was actually perpetrating such fraud. P. Br. at 2 (unnumbered). However, Petitioner's arguments about the merits of the underlying conviction, including her innocence or her confusion about the scheme in which she participated, amount to collateral attacks of her conviction, which the applicable regulation excludes from review in this forum. 42 C.F.R. § 1001.2007(d). Therefore, even if Petitioner now believes that she was the "victim of this health care fraud," the relevant evidence shows that she ultimately pleaded guilty to, and was thus "convicted" of conspiracy to commit health care fraud.

2. *Petitioner's conviction was for a criminal offense related to the delivery of a health care item or service under Medicare or a state health care program.*

A conviction is related to the delivery of a health care item or service under Medicare or a state health care program if there is a "common-sense connection or nexus between the offense and the delivery of an item or service under the program." *Scott D. Augustine*, DAB No. 2043, at 5-6 (2006) (citations omitted). Here, Petitioner was convicted of conspiracy to commit health care fraud. I.G. Ex. 5, at 1. As part of Petitioner's guilty plea, she signed an "Agreed Factual Basis for Guilty Plea," which stated that Petitioner received kickbacks for referring Medicare beneficiaries residing in the halfway houses

she operated to American Therapeutic Corporation (ATC) for partial hospitalization services. I.G. Ex. 4, at 1. Residents at Petitioner's halfway houses were required to attend "day programs" for drug and alcohol addiction, so Petitioner referred the Medicare beneficiaries to ATC for the partial hospitalization services, even though such services did not provide the addiction services the beneficiaries needed. I.G. Ex. 4, at 1. ATC billed Medicare for the partial hospitalization services even though no physician had ordered such services, and they were not appropriate treatment for drug and alcohol addiction.[2] I.G. Ex. 4, at 1. ATC provided Petitioner with a $15 kickback per Medicare beneficiary she referred.[3] I.G. Ex. 4, at 1.

Petitioner's conviction directly involved a scheme to defraud Medicare by billing the program for unnecessary and unauthorized partial hospitalization services. Petitioner, while not directly involved in the billing process, was an integral part of the scheme because she provided ATC with Medicare beneficiaries who did not need the services ATC provided and whose information ATC then used to defraud the Medicare program. I.G. Ex. 4, at 1. Certainly, fraudulent billing of Medicare, and any conduct taken in furtherance of such fraudulent billing is related to the delivery of an item or service under the Medicare program. *See, e.g.*, *Jack W. Greene*, DAB No. 1078, at 7 (1989) ("[O]ther offenses are also 'related' because they concern acts that directly and necessarily follow under the health care program from the delivery of the item or service."), *aff'd*, *Greene v. Sullivan*, 731 F. Supp. 835 (E.D. Tenn. 1990). Here, Petitioner's conviction for an offense linked to a criminal scheme to fraudulently bill Medicare is unquestionably related to the delivery of a health care item or service under the Medicare program.

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[2] Medicare covers partial hospitalization services provided through a community mental health center only if the services are prescribed by a physician, subject to certification by a physician, and furnished under an acceptable treatment plan. *See* 42 C.F.R. § 410.110.

[3] Petitioner recounts at length the acts giving rise to her conviction. *See* P. Ex. 1, at 5-9. She does not dispute the facts stated in the plea agreement or statement of facts to support the guilty plea, but rather she states that the "clients received excellent treatment at ATC" and that she accepted the kickbacks because she "believed the kickback monies were for good purposes." P. Ex. 1, at 6-7. Petitioner's assertions and explanations, while providing insight into the circumstances she faced before and during her participation in the ATC billing scheme, are immaterial to whether she was convicted of an offense related to the delivery of a health care item or service under Medicare. Regardless of how much or how little Petitioner knew about the illegality of the scheme when she participated in it, or what motivated her participation in the scheme, consideration of such statements is prohibited by regulation. 42 C.F.R. § 1001.2007(d); *see Lyle Kai, R.Ph.*, DAB No. 1979, at 7-8 (2005) (holding that exclusion was required even though the excluded individual may have been unaware of an underlying Medicaid fraud scheme).

3. *There is a basis to exclude Petitioner for a minimum of five years.*

The I.G., acting on behalf of the Secretary, must exclude an individual or entity convicted of an offense related to the delivery of a health care item or service under Medicare or a state health care program. Act § 1128(a)(1) (42 U.S.C. § 1320a-7(a)(1)); 42 C.F.R. § 1001.101(a). An exclusion made pursuant to section 1128(a)(1) of the Act must be for a minimum period of five years. Act § 1128(c)(3)(B) (42 U.S.C. § 1320a-7(c)(3)(B)); 42 C.F.R. § 1001.102(a). As explained above, Petitioner was convicted of an offense, conspiracy to commit health care fraud, which is related to the delivery of a health care service under the Medicare program. Accordingly, there is a basis to exclude Petitioner for at least a minimum of five years.

4. *The I.G. has established three aggravating factors in this case that support an increase to the minimum statutory exclusion period.*

The regulations provide several factors that the I.G. may consider as aggravating and a basis for lengthening an exclusion period. 42 C.F.R. § 1001.102(b). In this case, the I.G. established the presence of three aggravating factors by a preponderance of the evidence. These three aggravating factors are addressed below.

i. *The acts resulting in Petitioner's conviction caused, or were intended to cause, a loss to a government program or to one or more entities of $5,000 or more.*

The I.G. may increase the length of an exclusion if the acts resulting in the underlying conviction caused, or were intended to cause, a loss to a government program or to one or more entities of $5,000 or more. 42 C.F.R. § 1001.102(b)(1). In her plea agreement with prosecutors, Petitioner acknowledged that her "participation in the [ATC] conspiracy and scheme and artifice to defraud a government health care program resulted in an intended loss of approximately $645,975." I.G. Ex. 3, at 4. The intended governmental loss to which Petitioner admitted is substantially higher (over 129 times) than the minimum loss needed to trigger this particular aggravating factor.[4] Petitioner also acknowledged in her plea agreement that the loss was to a government program, Medicare, which is also the beneficiary of the restitution Petitioner must pay. Therefore, the I.G. has demonstrated

[4] The court ordered Petitioner to pay $253,687 in restitution to the Centers for Medicare & Medicaid Services (CMS). I.G. Ex. 5, at 5. While the Departmental Appeals Board (Board) has held that the amount of restitution is sufficient evidence to demonstrate the amount of program loss, *see, e.g.*, *Craig Richard Wilder*, DAB No. 2416, at 8 (2011), Petitioner acknowledged in her plea agreement that the government loss was much more than the restitution order ultimately imposed. Moreover, the sentence recommendations in Petitioner's plea agreement state that the governmental loss was between $400,000 and $1,000,000, consistent with a loss of $645,975. I.G. Ex. 3, at 6.

by a preponderance of the evidence that the acts resulting in Petitioner's conviction resulted in a loss to a government program of $5,000 or more.

In her hearing request, Petitioner argued that she did not receive more than $3,000 from the scheme, so the I.G. cannot increase her exclusion period based on a government loss of $5,000 or more. RFH at 1. However, the relevant aggravating factor is not couched in the amount Petitioner received from the scheme but rather in the amount of the government's actual or intended loss. *See* 42 C.F.R. § 1001.102(b)(1). The scope of Petitioner's pecuniary gain from her illegal activity is not relevant to establish the aggravating factor. Here, Petitioner's plea agreement shows an intended government loss of $645,975, significantly more than enough to establish this aggravating factor.

ii. *The acts resulting in Petitioner's conviction were committed over a period of one year or more*.

The I.G. may increase the length of an exclusion if the acts resulting in the underlying conviction occurred over a period of one year or more. 42 C.F.R. § 1001.102(b)(2). The indictment charging Petitioner with conspiracy to commit health care fraud alleged that the fraudulent billing scheme occurred for nearly three years, from October 29, 2007 to August 10, 2010. I.G. Ex. 2, at 6. Petitioner pleaded guilty to the conspiracy charge, without amending the offense period in the agreed statement of facts. I.G. Exs. 4, at 1-2; 5, at 1. Petitioner now claims that her involvement in the scheme occurred only from spring 2009, which she estimates as April or May 2009, until August 10, 2010. P. Ex. 1, at 5-6. Petitioner, however, has not offered any evidence supporting her claim.[5] Even if one accepts Petitioner's claim, her involvement in the scheme was for more than one year, which is enough evidence to establish the presence of this aggravating factor.

iii. *The court's sentence of Petitioner included incarceration*.

The I.G. may increase the length of an exclusion if the court's sentence includes a period of incarceration. 42 C.F.R. § 1001.102(b)(5). Here, the District Court for the Southern District of Florida sentenced Petitioner to 28 months in prison based on her guilty plea for conspiracy to commit health care fraud. I.G. Ex. 5, at 2. Petitioner is currently incarcerated under the District Court's sentence. Thus, the I.G. has established the presence of this aggravating factor.

[5] Petitioner is currently incarcerated and has emphasized that she has limited access to her files and other evidence. However, Petitioner's access to evidence that she believes will support her argument will not help her cause on this particular issue because she cannot relitigate facts underlying her conviction in this forum. 42 C.F.R. § 1001.2007(d). The underlying facts are relevant with regard to the weight afforded to each aggravating and mitigating factor, and Petitioner may have argued accordingly; however, it is not appropriate in this appeal to revise the terms stated in Petitioner's plea agreement.

5. *The I.G. concedes that one mitigating factor is present in this case, which may be considered as a basis to reduce the exclusion.*

If an aggravating factor justifies an increase to the length of an exclusion, the I.G. may then consider various mitigating factors as a basis to reduce the exclusion period to no less than five years. 42 C.F.R. § 1001.102(c). The mitigating factor relevant here is present when the excluded individual's "cooperation with Federal or State officials resulted in . . . [o]thers being convicted or excluded from Medicare, Medicaid, and all other Federal health care programs . . . ." *Id.* § 1001.102(c)(3)(i). During Petitioner's sentencing hearing, the Assistant United States Attorney stated:

> After indictment, [Petitioner] proffered truthfully about committing healthcare fraud and described [co-defendant] Williams' role in the ATC fraudulent scheme. Subsequently after she pleaded guilty, she debriefed completely and reiterated her willingness to testify against defendant Williams. After the government disclosed Ms. Evans' statements to defendant Williams, he pled guilty to a superseding information charging him with two counts of conspiracy to commit healthcare fraud.
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> Government believes that based on [Petitioner's] substantial assistance that led directly to codefendant Williams' pleading guilty, and therefore the government recommend[s] the downward departure of 20 percent.

I.G. Ex. 6, at 22-23. The government recommended a "5K.1" reduction in Petitioner's sentence based on her cooperation, which the court accepted in its sentence.[6] I.G. Ex. 6, at 20-21; Perlini Statement at 1. While the I.G. initially argued that no mitigating factors were present in this case, he now concedes that the mitigating factor based on Petitioner's cooperation is present here. I.G. Resp. Br. at 1. However, despite the consideration of this mitigating factor, the I.G. determined it does not warrant a reduction to the exclusion period. I.G. Reply Br. at 5-9.

6. *An exclusion period of 10 years is within a reasonable range.*

To determine whether an exclusion period is within a reasonable range, an ALJ must weigh any aggravating and mitigating factors in the case, and evaluate the quality of the circumstances surrounding the factors. *Vinod Chandrashekhar Patwardhan, M.D.*, DAB

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[6] Section 5K1.1 of the Federal Sentencing Guideline Manual provides for a downward departure from the Sentencing Guidelines if the government moves for such a departure based on the "substantial assistance" of the defendant.

No. 2454, at 6 (2012) (citing *Jeremy Robinson*, DAB No. 1905, at 11 (2004)). Here, the severity of the three aggravating factors supports an increase in the length of Petitioner's exclusion period beyond the five year minimum. A 10-year exclusion period is within a reasonable range based upon these aggravating factors. Upon consideration of the weight afforded to the mitigating factor in this case, the 10-year exclusion period is still within a reasonable range.

The loss to Medicare was significant in this case. While Petitioner's pecuniary gain may have been small compared to the overall governmental loss, the fraudulent billing scheme in which she participated was substantial, causing an intended loss of $645,975. I.G. Ex. 3, at 4. Governmental loss is an "exceptional aggravating factor" when, as here, the loss is "very substantially greater than the statutory minimum." *Robinson*, DAB No. 1905, at 11. On its own, the governmental loss here, 129 times greater the minimum needed to support an increase to the exclusion period, must be afforded such substantial weight as to support a significant increase to the reasonable range of exclusion periods that the I.G. may impose. The reasonable range of exclusion periods must reflect the substantial government loss as well as the need to protect government programs from untrustworthy individuals. *See Donald A. Burstein, Ph.D.*, DAB No. 1865, at 12 (2003). The 10-year exclusion period imposed here is within a reasonable range because it is large enough to reflect the scope of government loss and ensure that government programs are protected for a significant period from an individual proven to be untrustworthy when participating in such programs. *See Michael D. Miran, et al.*, DAB No. 2469, at 5-6 (2012) (upholding 13-year exclusion based on $257,946 loss to government program and one additional aggravating factor); *Emem Dominic Ukpong*, DAB No. 2220, at 4 (2012) (upholding 10-year exclusion based on $125,800 loss to government program and one additional aggravating factor); *Brenda Mills, M.D.*, DAB No. 2061, at 5-6 (2007) (upholding 10-year exclusion based on $84,112 loss to government program and one additional aggravating factor); *Robinson*, DAB No. 1905, at 12 (upholding a 15-year exclusion based on a $205,000 loss to government program and two additional aggravating factors).

The length of the criminal conduct resulting in Petitioner's conviction was nearly three years, although Petitioner argues her involvement in the billing scheme was approximately 13 months. The purpose of this aggravating factor "is to distinguish between petitioners whose lapse in integrity is short-lived from those who evidence a lack of such integrity over a longer period . . . ." *Burstein*, DAB No. 1865, at 8. The length of the fraudulent billing scheme in this case and Petitioner's prolonged involvement in that scheme, demonstrates Petitioner's lack of integrity was more than just "short-lived." Previously, the Board has accorded enough weight to sustain a 15-year exclusion to the fact that underlying criminal conduct was committed for "slightly more" than one year. *Burstein*, DAB No. 1865, at 12. Here, as in *Burstein*, the length of Petitioner's conduct shows prolonged lack of integrity that supports an increase to the five-year minimum exclusion period.

It is undisputed that the District Court sentenced Petitioner to 28 months incarceration for her part in the Medicare billing scheme. A prison sentence of more than two years for a financial crime demonstrates the severity of the billing scheme in which Petitioner was involved. The Board has determined that a nine-month period of incarceration was "relatively substantial," and supported an eight-year exclusion period. *Jason Hollady, M.D.*, DAB No. 1855, at 12 (2002). Here, the length of incarceration was more than three times that imposed in *Hollady*. Accordingly, this aggravating factor bears substantial weight, and supports an increase well beyond the five-year minimum exclusion period.

A reduction in the length of Petitioner's exclusion is not required simply because the I.G. originally imposed a 10-year exclusion without considering the mitigating factor he later conceded was present. There is no "rigid formula" for the I.G. or an ALJ to determine an exact exclusion period when weighing and evaluating aggravating and mitigating factors. *Patwardhan*, DAB No. 2454, at 6. Rather, the ALJ must review the factors de novo to determine whether the exclusion imposed is within a "reasonable range" of exclusion periods. *Ruske*, DAB No. 1851, at 11, (citing *Gary Alan Katz, R.Ph.*, DAB No. 1842, at 8 n.4 (2002)). A "reasonable range" is "a range of exclusion periods that is more limited than the full range authorized by the statute and that is tied to the circumstances of the individual cases." *Robinson*, DAB No. 1705, at 5 (quoting *Ruske*, DAB No. 1851, at 11).

Here, the three aggravating factors the I.G. established support a 10-year exclusion. Indeed, an exclusion period longer than 10 years would also be well supported by those three aggravating factors. For example, in *Robinson*, *supra*, the Board affirmed the I.G.'s 15-year exclusion of the petitioner based on a $205,000 loss to a government program, the three-year length of criminal activity that resulted in the underlying conviction, and a sentence of incarceration for just over one year. *Robinson*, DAB No. 1905, at 12. All three aggravating factors present here, which are the same as those in *Robinson*, are more substantial, yet the exclusion period is not as long. Therefore, a longer exclusion period in this case would be justified when compared to that in *Robinson*. The mitigating factor present here, Petitioner's cooperation with the government, is important and must be accorded some weight in the overall calculus to determine the reasonable range of exclusion periods. It is undisputed that Petitioner's cooperation directly resulted in one of her co-defendants pleading guilty, which certainly alleviated substantial effort the government would have had to incur in going forward with prosecuting that individual. I.G. Ex. 6, at 23. Petitioner's cooperation with the government may also recoup a small amount of the trustworthiness she lost by participating in the billing scheme. *See Wilder*, DAB No. 2416, at 13. ("In evaluating the trustworthiness of Petitioner, it is reasonable to infer that Petitioner's extraordinary cooperation demonstrates that he is not so untrustworthy . . . ."). However, it would be shortsighted to overlook that Petitioner's cooperation came after the fraudulent billing scheme had been stopped and the government incurred a massive loss. Therefore, this mitigating factor is accorded enough weight to eliminate substantially longer periods of exclusion from the overall reasonable

range of exclusion periods. However, the 10-year exclusion period imposed here is not substantially long enough to be impacted by the mitigating factor, and is still within a reasonable range.

III. Conclusion

For the foregoing reasons, the I.G. has a basis to exclude Petitioner from participating in Medicare, Medicaid, and all federal health care programs. After considering all aggravating factors and one mitigating factor, an exclusion of 10 years is within a reasonable range. Therefore, I sustain the I.G.'s exclusion of Petitioner for 10 years, effective July 19, 2012.

/s/
Joseph Grow
Administrative Law Judge